

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-47572-2022

Date of Decision: 07.02.2023

Sunil

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Monty Goyal, Advocate for the petitioner.

Mr. Jaspal Singh Guru,
Assistant Advocate General, Punjab.

ASHOK KUMAR VERMA, J. (ORAL)

Custody certificate dated 06.02.2023 along with reply dated 27.01.2023, by way of affidavit of Sh. Babandeep Singh, Assistant Commissioner of Police, Sub Division V Cantonment, Jalandhar, filed by learned counsel for the State are taken on record.

The petitioner has filed the present petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No. 57 dated 24.05.2021 registered under Section 22 of the NDPS Act (Section 29 of the NDPS Act was added later on) at Police Station Cantt. Jalandhar.

Briefly stated, on 24.05.2021, the petitioner was intercepted by police party headed by SI Balwinder Singh, in the area of village Sansapur, P.S. Cantt., Jalandhar, who on seeing the police party tried to flee away from the spot after dropping a polythene bag from the pocket of his trouser and from the said bag 68 intoxicant tablets containing Etizolam were recovered without any permit or licence.

Learned counsel for the petitioner, *inter alia*, contends that

petitioner has falsely been implicated in the instant case. A false recovery has been planted against the petitioner. He further contends that as per FSL report dated 04.08.2021 (Annexure P-2), out of total 68 intoxicant tablets, only 10 tablets were sent for chemical examination with average weight of 133 mg. and the said quantity comes to 9.44 grams. Learned counsel for the petitioner has placed reliance upon a judgment of a Division Bench of this Court in ***State of Punjab vs. Dharam Singh, 2010(3) RCR (Criminal) 94***, to contend that in the absence of all 68 loose tablets having been sent for examination to the FSL, it would not be open to the prosecution to presume that the remaining 58 loose tablets also contained 133 mg. Etizolam salt per tablet. The petitioner is in custody since 24.05.2021. No useful purpose will be served by further detention of the petitioner in custody. Therefore, he may be released on regular bail.

The position as noted above has not been controverted by learned State Counsel, who confirms that the number of loose tablets sent for chemical examination was only 10 and that Etizolam salt detected in the aforementioned 10 tablets was 133 mg per tablet, total 9.44 grams.

Learned State Counsel also does not dispute the applicability of decision of Hon'ble the Division Bench in ***Dharam Singh's case (supra)***, on the point that in case only a small sample from amongst the loose tablets is sent for chemical examination, it is not possible to presume that the remaining loose tablets also contain the same salt.

Accordingly, without commenting upon the merits of the case, but by taking into account the fact that the petitioner has been in

custody since 24.05.2021, Etizolam salt of the 10 loose tablets sent for chemical examination alprazolam was 133 mg per tablet, total 9.44 mg and as per the decision as referred to above, it is not possible to presume that all remaining loose tablets contain the same salt where only a small number of the loose tablets are sent for chemical examination as also in view of the fact that the trial is likely to take considerable period of time to conclude, the petition for regular bail is *allowed* and the petitioner-Sunil is ordered to be released on regular bail during the pendency of the trial on his furnishing bail bond and surety bond to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, provided he is not required in any other case.

However, it is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case. It is also made clear that in case the petitioner misuses the concession of bail in any manner whatsoever, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in this case.

Petition allowed in the aforementioned terms.

February 07, 2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No