2023:PHHC: 056448

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47897 of 2022(O&M)
Date of Decision: 24.04.2023

Sukhbir Singh @ Sukha

…**Petitioner**

Versus

State of Punjab

…**Respondent**

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by:- Mr. P.S. Sekhon, Advocate
For the petitioner.

Mr. Hakam Singh, AAG Punjab.

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KARAMJIT SINGH, J.

The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case having FIR No. 57 dated 19.05.2022, registered under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act (for brevity, the Act) at Police Station Kot Ise Khan, District Moga.

The allegations in brief are that the police recovered 30 strips each containing 10 tablets of Etizolam 0.50 Etirelax-0.5 (in total 300 tablets) from the petitioner on 19.05.2022.

The counsel for the petitioner has contended that the petitioner was falsely implicated in the present case and that there is no independent corroboration to the prosecution story. The counsel for the petitioner further submits that the alleged recovery was effected in violation of the mandatory

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provisions of Section 50 of the Act and further the recovered 30 strips of tablets were not bearing any batch number, manufacturing date and expiry date as is evident from FIR, Annexure P-1 and recovery memo, Annexure P-2. The counsel for the petitioner has further submitted that it is evident that as per report of FSL, Annexure P-4 only one of the said strips having 10 tablets was sent for analysis to FSL. The counsel for the petitioner further submits that in the absence of any batch number, manufacturing date etc., one strip sent for examination could not be treated as representative sample of all 30 strips. The counsel for the petitioner further submits that the petitioner is in custody for the last about 11 months and in the given circumstances the prosecution has *prima facie* failed to establish that the alleged recovery of medical intoxicants effected from the petitioner comes under commercial quantity as per provisions of the Act. The counsel for the petitioner further submits that thus, rigors of Section 37 of the Act are not applicable to the instant case and resultantly the petitioner is entitled to grant of bail.

Short reply by way of affidavit of Ravinder Singh, Deputy Superintendent of Police, Dharamkot, District Moga filed on behalf of the State is taken on record. As per said short reply, 30 strips each containing 10 tablets make Etizolam 0.5 Etirelax 0.5 were recovered from possession of the petitioner by the police, but batch number, date of manufacturing and expiry date were already erased from the said strips of tablets, before their recovery was effected.

The State counsel has submitted that in the instant case petitioner was found to be in possession of commercial quantity of contraband. The State counsel further submits that the petitioner is a habitual

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offender and is involved in number of other criminal cases whose detail is given in the short reply filed by the State. The State counsel further submits that the trial is going on and at this stage no ground is made out to grant regular bail to the petitioner. However, the State counsel has not disputed that only one strip out of above-said total 30 strips each having 10 tablets, was sent to FSL for its analysis and as per the report of FSL, Annexure P-4 the same was found to be containing Etizolam and more than 2.5 grams of said salt comes under commercial quantity.

I have considered the submissions made by counsel for the parties.

As per the prosecution version, 30 strips each having 10 tablets of Etizolam 0.50 Etirelax-0.5 were recovered from the possession of the petitioner on 19.05.2022. Admittedly, the said strips were not bearing any batch number, manufacturing date and expiry date. This fact has also been admitted by the State in its short reply wherein it has been mentioned that batch number, manufacturing date and expiry date on the said strips was removed/ erased by the petitioner before the said recovery was effected. From the perusal of the report of FSL, it appears that only one strip out of total 30 strips having 10 tablets was sent to FSL for its analysis and the copy of report of FSL is Annexure P-4. In the absence of batch number, manufacturing date and expiry date, it is a moot point as to whether aforesaid one strip having 10 tablets could be treated as representative sample of the entire contents of 30 strips.

In the present case, the petitioner is in custody for the last more than 11 months and is involved in one other criminal case under the Act, in which he is stated to be enlarged on bail. Further, there is nothing on the

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record to suggest that the petitioner if released on bail is likely to commit any such offence in future.

In the light of the above, this Court is of the view that the parameters of bail available under Section 37 of the Act appears to have been satisfied in the instant case.

Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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