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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-47577-2023

Date of Decision: 12.10.2023

Varinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S. Sekhon, Advocate,
for the petitioner.

Mr. G.S. Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.64 dated 13.04.2023, under Sections 22 & 29 of the NDPS Act, 1985, registered at Police Station Bhawanigarh, District Sangrur.

2. It has been submitted by learned counsel for the petitioner that it is a case where the petitioner is in custody for 5 months and 28 days and as per the allegations against the petitioner, the petitioner was seen by the police party, who was in search of bad persons and allegedly the petitioner on seeing the police party had thrown away one polythene bag in the bushes and from where the police party had recovered 10 bottles of *Wincirex cough syrup* containing the salt of *Chlorpheniramine Maleate & Codeine Phosphate* and each bottle was of 100 ml. He further submitted that even

otherwise the total weight comes to 1 kg. and as per the NDPS Act any quantity more than 1 kg. is a commercial quantity and submitted that in this way the alleged confiscation of 1000 ml. is not falling in the commercial quantity under the NDPS Act. He further submitted that even otherwise also as per the prosecution, no recovery was effected from the conscious possession of the petitioner and it is from the bushes and even if the story of the prosecution is to be believed then no such recovery was effected from the petitioner. He also submitted that the petitioner is not involved in any other case under the NDPS Act but earlier he was involved in one case under Section 302 IPC in which he has been acquitted and one more case under the IPC which is pending against the petitioner and it was because of this reason, the petitioner has been falsely implicated in the present case by the police, and therefore, has prayed that the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. G.S. Sidhu, learned AAG, Punjab has stated that so far as the custody of the petitioner is concerned, the same is correct and recovery in the present case is 10 bottles of *Wincirex cough syrup* containing the salt of *Chlorpheniramine Maleate & Codeine Phosphate*. He further submitted that the aforesaid confiscation of 1000 ml. does not fall in the category of commercial quantity under the NDPS Act. He also submitted that so far as the antecedents of the petitioner is concerned, it is correct that the petitioner is not involved in any other case under the NDPS Act.

4. I have heard the learned counsels for the parties.

5. The total custody of the petitioner is 5 months and 28 days and

after the investigation of the case, challan has been presented and thereafter, charges have also been framed on 28.08.2023. The subject matter of the total confiscated quantity in the present case was 1000 ml. of *Chlorpheniramine Maleate & Codeine Phosphate*. Even without going into the aforesaid issue as to whether it falls in the commercial quantity or not, being on border line, this Court would consider the allegations against the petitioner in the FIR itself wherein as per the prosecution, there was no recovery from the conscious possession of the petitioner but as per the FIR, the bottles which allegedly the petitioner was carrying was thrown by him on seeing the police party, who were on checking of suspicious element into the bushes and recovery was effected from the bushes. The petitioner is stated to be not involved in any other case under the NDPS Act and therefore, considering the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

6. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

12.10.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No