

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**Case No. : CRM-M-50536-2022****Date of Decision : February 23, 2023**

Sukhwinder Singh @ Binder Petitioner

vs.

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. Jaiteshwar S. Bhandari, AAG, Punjab.

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GURBIR SINGH, J. :

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.143 dated 10.08.2021, under Section 22/61/85 of the NDPS Act, registered at Police Station Nihal Singh Wala, District Moga.

In compliance of order dated 20.01.2023, passed by this Court, Status Report by way of affidavit of Manjit Singh, PPS, Deputy Superintendent of Police, Sub Division Nihal Singh Wala, District Moga, has been filed today in Court, which is ordered to be taken on record.

Learned counsel for the petitioner states that the petitioner is an old man of 60 years. He has been falsely implicated in this case.

It is the case of prosecution that 25 strips (each containing 10 Etizolam Tablets, total number of tablets came out to be 250) with average weight of each tablet being 101 mg, thus in total weighing 25.25 grams,

were recovered from the possession of the petitioner.

From a bare perusal of the report of Chemical Examiner (Annexure P-2), it transpires that a strip was found to contain 10 tablets of peach colour labelled as Ralin-0.5 MD and the ingredient/salt present was Etizolam. In the Recovery Memo (Annexure P-3), Batch Number of tablets was mentioned. However, in the report of Chemical Examiner, Batch Number was not given.

Learned counsel for the petitioner states as per the allegations, the petitioner was carrying a transparent polythene bag but it is highly unnatural that a person carrying some contraband would carry it in a transparent polythene bag so that contents of the same could be seen by each and everyone.

In support of his contentions, learned counsel for the petitioner relies upon a few judgments of Co-ordinate Benches of this Court in **Binder Kaur @ Goga vs. State of Punjab** reported as **(2021) 3 RCR (Criminal) 360**, **Jaswant Singh @ Nanni vs. State of Punjab** passed in **CRM-M-51692-2021**, decided on 13.09.2022, **Munish Kumar and others vs. State of Punjab** reported as **(2022) 3 RCR (Criminal) 751** and **Parvinder Singh vs. State of Punjab** passed in **CRM-M-3777-2022**, decided on 17.02.2023.

Learned State Counsel, on the other hand, while opposing the prayer made by learned counsel for the petitioner, states that the recovery of contraband in the case in hand falls under the commercial quantity. A sealed sample containing contraband was sent to Regional Testing Forensic Science Laboratory, Ludhiana and there was no tampering. However, he

does not deny the fact that the petitioner is in custody for more than eight months. Earlier, he was granted interim bail as report from Chemical Examiner was not received.

Heard.

It is the case of prosecution that the petitioner was found in possession 25 strips of Etizolam Tablets (each strip containing 10 tablets – total 250 intoxicant tablets) having Batch No.8569 with Manufacturing Date as March 2021 and Expiry date as February 2023 but in the report of Forensic Science Laboratory, it is mentioned that “*on opening the parcel it was found to contain 10 tablets of peach colour in a strip labelled as Ralin – 0.5 MD*”. No Batch Number is mentioned in the said report. Even as per the version of prosecution, petitioner was carrying the said tablets in a transparent polythene bag.

In case of **Munish Kumar** (*supra*), it was held that :-

“...It is certainly highly unlikely that a person who is committing an offence in respect of any contraband would do it in such a manner that his/her detection is inevitable. Carrying contraband in a transparent polythene bag making it clearly visible to others would surely invite attention of everybody who passes by. In these circumstances, the case of the prosecution is rather rendered suspect particularly in view of the fact that the petitioner is not even stated to be a previous convict.”

Moreover, in the present case, a doubt is also created whether representative sample of contraband was actually analysed by the Forensic

Science Laboratory. In the Recovery Memo, it is not mentioned that strips recovered from the possession of the petitioner were labelled as Ralin-0.5 MD. In the Recovery Memo, only Etizolam Tablets are written. There is no explanation for such a major discrepancy.

In view of the above discussion, this Court is of the opinion that petitioner is entitled for regular bail even in the face of rigors of Section 37 of the NDPS Act.

Accordingly, without commenting upon the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail, on his furnishing bail bonds/surety bonds, to the satisfaction of learned Trial Court/Duty Magistrate, Moga.

However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

February 23, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.