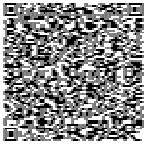


2024:PHHC:143328



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

287

CRM-M-5863-2024 (O&M)
Date of decision: 05.11.2024

Sukhdev Singh @ Sukha ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. N. S. Dandiwal, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No. 79 dated 18.08.2023, registered under Sections 22 and 29 of the NDPS Act, 1985 at Police Station Badhni Kalan, District Moga.
2. Brief facts of the case relevant for the disposal of the present petition are that on 18.08.2023, the petitioner, while coming on foot carrying a black polythene envelope in his right hand, was apprehended by a police party headed by ASI Jagdev Singh and recovery of 20 tablets of Etizolam and 10 tablets of Tramadol Hydrochloride was effected from him. He was formally arrested at the spot. During investigation, he suffered disclosure statement to the effect that the recovery contraband was supplied to him by one Sukhpreet Singh @ Sukha. On the basis of the said disclosure, Sukhpreet Singh @ Sukha was also nominated in this case as an accused and subsequently he was arrested. After completion of necessary investigation and usual formalities, *challan* was

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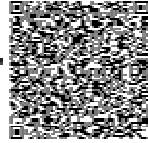


presented before the Court and presently, the petitioner along with the co-accused is facing trial for commission of aforesaid mentioned offence. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 07.12.2023.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. In fact, the recovery of the alleged contraband, shown to have been effected from the petitioner, was planted by the police officials. No independent witness was joined at the time of effecting alleged recovery from the petitioner. The story put forth by the police party is concocted one. It is also argued that the mandatory provisions of Section 50 of the Act were not complied with. Investigation has since been completed and challan has been presented. The trial is likely to take a long time. The petitioner is in custody since 18.08.2023. No useful purpose would be served by keeping him in custody anymore. It is also argued that co-accused Sukhpreet Singh @ Sukha has already been granted concession of regular bail by this Court, vide order dated 19.12.2023 passed in **CRM-M-59107-2023**. Therefore, on the ground of parity too, the petitioner deserves to be granted benefit of bail. It is, thus, urged that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State. It is submitted therein and learned State counsel has argued that the petitioner was apprehended by the police party on 18.08.2023 and recovery of total 30 intoxicant tablets was effected from him. FSL report has been received, as per which, 20 tablets were found to be 'Etizolam' and 10 tablets were found to be 'Tramadol Hydrochloride'. Since the total weight of the Etizolam tablets was found to be 4.10 grams, the same falls under the commercial quantity as the threshold for the

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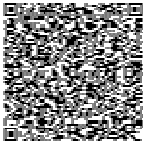


commercial quantity of Etizolam is 2.5 grams. In view thereof, it is argued that since a commercial quantity of the contraband has been recovered from the petitioner, the rigors of Section 37 of the NDPS Act would be attracted against him. Trial may be expedited. It is also argued that if the petitioner is released on bail, he may abscond or indulge in the similar offences. It is, thus, argued that the petition is liable to be dismissed.

5. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

6. As per the allegations, the petitioner was apprehended by the police party on 18.08.2023 and recovery of 30 intoxicant tablets was effected from him, out of which, 20 tablets were found to be 'Etizolam' and 10 tablets were found to be 'Tramadol Hydrochloride'. This Court has perused the FSL report, as per which, the total weight of the Etizolam tablets was found to be 4.10 grams. This quantity obviously falls under the commercial quantity as the threshold for the commercial quantity of Etizolam salt is only 2.5 grams. Hence, the rigors of Section 37 of the NDPS Act would certainly be attracted against the petitioner. As regards the arguments advanced by learned counsel for the petitioner with regard to non-compliance of the provisions of Section 50 of the Act and other lacunas in the investigation, the same have direct bearing on the merits of the case, which cannot be looked into at this stage while deciding a bail petition filed under Section 439 of Cr.P.C. The apprehension expressed by learned State counsel that the petitioner, if extended benefit of bail, may abscond or indulge in similar offences cannot be stated to be unfounded at this stage. So far as the claim of the petitioner with regard to parity with the co-accused, who has been granted benefit of bail, is concerned, it can be stated that the case of the

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petitioner is not on similar footing with that of the co-accused as no recovery was effected from the co-accused, whereas the petitioner was apprehended at the spot and aforesaid recovery of the contraband, which falls under commercial quantity, was effected from him. Therefore, keeping in view the discussion as made above, the quantity of recovered contraband, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioner does not deserve to be granted benefit of regular bail, at this stage. Hence, the petition is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

05.11.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>