

State Vs. Swaran Singh.

Present: Sh. H.S.Setia, Advocate, counsel for the accused/
applicant Swaran Singh son of Harnam Singh.
Sh. Sahib Singh, Additional PP for the State

Heard on application under Section 439 of CrPC moved on behalf of the accused/ applicant, namely Swaran Singh son of Harnam Singh for his release on bail in case bearing FIR No. 156, dated 26.7.2023, under Section 22 and 29 of NDPS Act, P.S. Dharamkot, District Moga.

2. In brief, as per version of the prosecution, on 26.07.2023, in the area of Noorpur Hakima, P.S. Dharamkot, District Moga, 55 loose intoxicating tablets were recovered from the possession of accused Swaran Singh son of Harnam Singh, without any permit or license.

3. I.O. ASI Kuldeep Singh has appeared and suffered a statement as regards recovery of 55 intoxicating tablets from the possession of accused/ applicant and deposed that as per report of FSL, salt Etizolam has been detected in the recovered contraband and the recovered substance falls under the category of commercial quantity.

4. As per notification published by Ministry of Finance (Department of Revenue), in the Gazette of India vide S.O. No. 1275 (E) dated 23.03.2021, the Central Government made amendment in the list of Psychotropic Substances specified in the Schedule to the Act, whereby salt Etizolam has been incorporated at serial No. 110ZN in the

Narcotic Drugs and Psychotropic Substances Act, 1985 and as per notification No. S.O. No. 1276 (E), dated 23.3.2021, at serial No. 238ZZC, the quantity of 0.05 gram of Etizolam salt is recorded to be falling under small quantity, while quantity of 2.5 gram and above falls under the commercial quantity.

5. ASI Kuldeep Singh has also produced on record copy of report of FSL, according to which the contents of intoxicating tablets claimed to have been recovered from possession of the accused/applicant were found to be that of Etizolam, each tablet having average weight of 131 mg and the total weight of 55 intoxicating tablets as referred above, works out to be 7.2 gram containing salt Etizolam, which falls within the ambit of commercial quantity, as per the above referred notification.

6. It was observed by Hon'ble the **Apex Court in State of Kerala V. Rajesh cited as AIR 2020 SC 721**, *“The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for*

believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

7. Neither there are reasonable grounds for believing that the accused is not guilty of such offence under the NDPS Act nor that he is not likely to commit any offence while on bail. Section 37 of the NDPS Act is a tool devised by the parliament to have a check on the menace of dangerous drugs flooding the market and a sine-qua-non for granting bail to the accused under the NDPS Act.

8. In view of bar contained in Section 37 of NDPS Act and as at this stage, there being nothing on the record to presume that the accused/ applicant is innocent or that if released on bail, he shall not indulge into such like activities, the bail application in hand is dismissed.

9. Needless to mention that anything discussed herein above shall have no bearing, whatsoever, upon the merits of the case and the observations recorded herein above, if any, are solely for the purpose of disposal of the application in hand.

10. Papers of this bail application be tagged with the remand papers.

Pronounced in open court
Dated 28.09.2023

Sanjeev Kumar, Stenographer

(Sanjeev Kundi)
Judge, Special Court,
Moga.
UID No. PB-0246