

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

CRM M-17328 of 2015

Date of decision : 06.10.2015

Bachittar Singh @ Pavittar Singh @ Pahalwan & anr.

....Petitioners

V/s

State of Punjab

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. D.S. Pheruman, Advocate for the petitioners.

Mr. Shilesh Gupta, Addl. A.G. Punjab.

RAJAN GUPTA J.

This is a petition filed under Section 439 Cr.P.C. seeking regular bail in a case registered against the petitioners vide FIR No. 78 dated 20.08.2014 under Sections 15/21/61/85 of the NDPS Act at Police Station Bholath, district Kapurthala.

Learned counsel for the petitioners has vehemently argued that alleged contraband recovered from the petitioners was Diphenoxylate hydrochloride which is a mixture and cannot be termed as psychotropic substance. Besides, there being a hydrochloride therein, the percentage of contraband would be too less to term it as commercial quantity. Thus, petitioners deserve to be enlarged on bail.

Prayer has been opposed by learned State counsel. According to him, 260 grams from petitioner no. 1 and 255 grams from petitioner no. 2 of intoxicant powder were recovered. Same was sent to Chemical Examiner and it was reported that it contained Diphenoxylate Hydrochloride which finds mention at

serial no. 58 of the notification. According to him, Diphenoxylate is a substance to which hydrochloride is added to increase its solubility. Same falls in the ambit of the Act. He further submits that trial is nearing its culmination.

I have heard learned counsel for the parties and given careful thoughts to the facts of the case.

On 20.08.2014, a motorcycle driven by Bachittar Singh @ Pavittar Singh (petitioner no. 1 herein) was intercepted. Jangal Singh (petitioner no. 2) was a pillion rider. On search, 10 kgs of poppy husk was effected from their joint possession. Besides, 255 grams of intoxicant powder from petitioner no. 2 and 260 grams of intoxicant powder from petitioner no. 1 were also recovered. A parcel was sealed and sent for chemical examination. A report was received that intoxicant powder contained Diphenoxylate Hydrochloride which was a salt prepared from Diphenoxylate. Plea of the petitioners that said contraband would not fall within the ambit of the Act is totally misconceived. The Diphenoxylate is a manufactured drug which find mentioned at serial no. 58 of the notification. Recovery effected from the petitioners falls in the category of commercial quantity. Thus, section 37 of the Act would be attracted. Petition is, thus, without any merit and is hereby dismissed.

October 06, 2015

Ajay

(RAJAN GUPTA)
JUDGE