

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

CRM No.M-43516 of 2014

Date of decision: 23.02.2015

Karnail Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Keshav Pratap Singh, Advocate for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab
assisted by ASI Mohan Lal.

Jitendra Chauhan, J. (Oral)

This petition under Section 439 of the Code of Criminal Procedure is for grant of regular bail in case FIR No.161 dated 28.11.2013, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Khamanon, Distt. Fatehgarh Sahib.

It is contended that the quantity allegedly recovered from the petitioner is a non commercial quantity. The petitioner is in custody since 28.11.2013. The learned counsel cites **Sarabjit Kaur Vs. State of Punjab**, 2011(2) RCR (Criminal) 119, **E. Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau**, 2002(2) RCR (Criminal) 597 and **Anup Gupta Vs. State of Punjab**, 2008(4) RCR

(Criminal) 390.

On the other hand, the learned State counsel, submits that the quantity recovered falls under the category of commercial quantity. About 1100 capsules containing Dextropropoxyphene salt has been allegedly recovered from the petitioner.

Heard.

This Court in **Inderjeet Singh @ Laddi and others** Vs.

State of Punjab 2014(3) RCR (Criminal) 953, held as under:-

35. “The Central Government, therefore, by notification dated 19.10.2001 has specified 'small quantity' and 'commercial quantity' of various narcotic drugs and psychotropic substances by a table. Notification dated 18.11.2009 has been issued by the Central Government, which mentions that quantities shown in column 5 that relates to 'small quantity' and column 6 that relates to 'commercial quantity' of the table relating to respective drugs shown in column 2 that relates to the name of narcotic drug and psychotropic substance, is to apply to the entire mixture or any solution or any one or more of narcotic drugs or psychotropic substances of that particular drug in dosage form etc. wherever existence of such substance is possible and not just its pure drug content. The intention of the said notification is to prevent and prohibit the use of narcotic drugs and psychotropic substances wherever there is a misuse of the said drugs for other than medicinal or therapeutic use. As has already been noticed various 'manufactured drugs' have been notified vide notifications dated 14.11.1985 and 29.1.1993.

Section 21 of the NDPS Act provides for punishment for contravention in relation to manufactured drugs and preparations. The punishment prescribed is with reference to the quantity possessed. Therefore, the punishment which an offender is liable to be inflicted with in case he contravenes the provisions of Section 21 of the NDPS Act is dependent on the contravention of the quantity of drug that is involved. For purpose of determining the quantity as to whether it is small quantity, lesser than commercial quantity but greater than small quantity or commercial quantity is to be determined with reference to the notification providing a table as afore-mentioned specifying small quantity and commercial quantity to which Note 4 has been added vide notification dated 18.11.2009 mentioning therein that the quantity whether it is small quantity or commercial quantity relating to the drugs shown in column 2 is to apply to the entire mixture or any solution or any one or more narcotic drug or psychotropic substance of that particular drug in dosage form etc. wherever existence of such substance is possible and not just its pure content.

36. The manufactured drugs of which there has been a contravention in the present cases have been sold, purchased, distributed, stored, transported, carried etc. in a bulk form and mostly these are without proper licences or authorizations. In respect of such drugs which are carried in bulk form, the notification dated 18.11.2009 would apply and the question that these drugs contain an exception would not be applicable as the exceptions would apply when the drugs are for medicinal or therapeutic use. Besides, the quantity of

manufactured drugs is not to be determined on per capsule basis when these are carried without proper licence or authorization. In other words, the mere dosage of the manufactured drug in one capsule is not to be considered but the dosage in the number of capsules together is to be considered for the purpose of determining as to whether the exceptions provided in the notification dated 14.11.1985 declaring the narcotic substances and preparations as mentioned therein to be manufactured drugs. Moreover, in case of contravention of Section 21 NDPS Act relating to manufactured drugs, Note 4 of the notification 18.11.2009 would apply that is to say that the quantity in respect of which there is a contravention is 'small quantity', 'lesser than commercial quantity but greater than small quantity' or 'commercial quantity' is to apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form etc. wherever existence of such substance is possible and not just its pure drug content. Therefore, the question of exceptions being provided in respect of drugs at serial No.16, 35, 36, 37, 48, 58, 70, 76, 83 and 87 of the notification dated 14.11.1985 is inconsequential when these drugs are carried in a bulk form and the entire quantity of the bulk is to be taken into consideration and not per dosage specially when these are carried in violation of the D&C Act and the 1945 Rules that is to say are sold, purchased, distributed, stored, transported, carried etc. without a valid licence or kept without a valid authorization.

54 (v) It is to be ascertained in each case whether the manufactured drug, the contravention of which is

alleged by a person falls within the permissible limits of the percentage of dosage provided for the drug by the notification dated 14.11.1985 and subsequent notification dated 29.01.1993 issued in exercise of power conferred by Section 2 (xi) (b) NDPS Act. However, the contravention of manufactured drug or possession of quantity in bulk is to be taken into consideration and not per dosage specially when there is a violation of the D&C Act and the 1945 Rules that is to say they are sold, purchased, distributed, stored, transported, carried etc. without a valid licence or kept without a valid authorization. The possession of quantity in bulk would be an indication that it is not for medicinal or therapeutic use but is sought to be misused by drug addicts and drug traffickers and would be treated as applicable to the entire quantity recovered of anyone or more narcotic drug or psychotropic substance of that particular drug in dosage forms and not just its pure drug content.

54 (vi) When a manufactured drugs are sold, purchased, distributed, stored, transported, carried etc. in bulk form, the notification dated 18.11.2009 issued by the Central Government in exercise of powers under Section 2 (viia) and (xxiia) NDPS Act would apply and the question that these drugs contain an exception in terms of notification dated 14.11.1985 would not apply as the exceptions would apply when the manufactured drugs are for medicinal or therapeutic use.

54 (vii) The quantity of manufactured drugs is not to be determined on per capsule basis when these are carried without proper licence or authorization. In other words the mere dosage of the manufactured drug in one

capsule is not to be considered but the dosage in the number of capsule together is to be considered for determining as to whether the exceptions provided in the notification dated 14.11.1985 declaring the narcotic substance and preparations as mentioned therein to be manufactured drugs.”

Keeping in view the above law laid down in Inderjeet Singh's case (supra), no case for grant of bail is made out at this stage.

Dismissed.

23.02.2015

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(JITENDRA CHAUHAN)
JUDGE