

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M No.1140 of 2016

Date of Decision:-12.02.2016

Jatinder Kumar @ Tina.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. D.N. Ganeriwala, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab
assisted by ASI Gurmail Singh.

JASWANT SINGH, J (ORAL)

Prayer is under Section 439 Cr.PC for grant of regular bail to the petitioner Jatinder Kumar @ Tina in case FIR No.76 dated 17.09.2014 for offences punishable under Sections 22/61/85 of the NDPS Act registered with Police Station City-I, Mansa.

It is the case of the prosecution that on 17.09.2015 on a secret information that accused-petitioner Jatinder Kumar @ Tina and co-accused Neeraj Kumar are coming on a motor cycle PB-31K-9982 (owned by present petitioner-accused) are in the habit of selling Narcotics. On interception of the motor cycle both aforesaid accused by throwing their respective bags fled away from the spot. It appears that separate seizure

memos were prepared whereby the bags thrown by each of the accused was identified and the contents sent for sampling.

It is contended that from the recovery memo Annexure R-1, from the bag thrown by petitioner 55 injections of Phenergan, 10 injections of Norphine and 300 loose tablets were recovered. The only injection regarding Norphine is notified as Narcotic Substance and as per the FSL report the seized quantity of 10 x 2 ml injections falls in the quantity shown as per their stand is commercial.

It is further contended that total 20 ml if converted into grams would be less than 20 grams. It is argued that if the seizure is more than 2 grams then it falls within the category of commercial quantity, therefore, in the present case, the seized contraband would be non commercial quantity. The petitioner is stated to be in custody since 28.09.2015 and not involved in any other criminal case. It is also contended that the petitioner was not arrested at the spot.

Learned State Counsel assisted by ASI Gurmai Singh submits that 80 bottles of Rexcof syrup recovered from the other bag was also be construed towards the conscious possession of the petitioner, therefore, the seized quantity would amount to commercial in nature.

In response it is submitted that the memos were separately prepared qua separate bags and, therefore, the contents of the other bag cannot be read towards the seized bag of the petitioner.

Be that as it may, without going into the merits of the case, keeping in view the above and that the petitioner is in custody since 28.09.2015 and the fact that he is involved in any other case and trial is not

likely to be concluded in near future, present petition is allowed and the petitioner Jatinder Kumar @ Tina is ordered to be released on bail to the satisfaction of learned CJM/Duty Magistrate, Mansa.

Petition stands disposed of.

**(JASWANT SINGH)
JUDGE**

February 12, 2016
Vinay