

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

CRM No. M-16630 of 2016.

Decided on: 22.08.2016.

Gurwinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

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

Mr. Arshdeep S. Kler, DAG, Punjab.

Mr. Luvinder Sofat, AAG Punjab.

JITENDRA CHAUHAN.J.

This is an application under Section 439 of the Code of Criminal Procedure for grant of regular bail in FIR No. 147 dated 22.06.2014 registered under Section 22 of the Narcotic drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) at Police Station Sultanwind, District Amritsar.

It is contended by the learned counsel for the petitioner that 160 kg of intoxicant powder was recovered from the petitioner. As per the medical report, the total quantity of the salt is 4.2 gm which is less than the commercial quantity, thus, the submission of the learned counsel is that the recovery being 4.2 gm is not commercial in nature. He further refers to the notification dated 18.11.2009, issued by Ministry of Finance Department of Revenue (Annexure P-5), which states that the salt in the concerned table is to be noticed for the

purpose of recovery. The learned counsel cites (i) E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau 2008(2) RCR (Criminal) 597; (ii) State of NCT of Delhi vs. Ashif Khan @ Kalu 2009(2) RCR (Criminal) 267; (iii) Nikku Khan @ Mohammadeen vs. State of Haryana 2011(3) RCR (Criminal) 733; (iv) Pappu Singh vs. State of Haryana 2011(5) RCR (Criminal) 650.

On the other hand, the learned State Counsel has submitted that to do away with the effect of E. Micheal Raj's case (supra), the notification dated 18.11.2009 (Annexure P-5) was introduced. The validity of the notification is not in issue in the present case. The learned State counsel refers to Inderjeet Singh @ Laddi and others vs. State of Punjab 2014(3) RCR (Criminal) 953, wherein Hon'ble Division Bench has considered the notification and held that the entire quantity is to be taken into consideration.

I have heard the learned counsel for the parties and have gone through the case file.

The question whether the entire substance including the neutral substance is to be seen or only the quantity of content of narcotic drug is to be seen, was considered by Hon'ble Apex Court in E. Micheal Raj's case (supra). The Hon'ble Apex Court held that the quantity of content of narcotic drug is to be seen for the purpose of determining whether the same constitutes small or commercial quantity. Thereafter, in order to dilute the effect of E. Micheal Raj's

case (supra), the Central Government issued the notification dated 18.11.2009 (Annexure P-5) thereby adding Note-3 at the end of the Table attached in the NDPS Act which reads as under:-

“The quantities shown in column 5 and coloumn 6 of the Table relating to the respective drugs shown in coloumn 2 shall 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 or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content.”

It was added that the quantity shall apply to the entire mixture. In view of the notification (Annexure P-5), the contention of the learned counsel for the petitioner pales into insignificance. The validity of the notification (Annexure P-5) is not in question before this Court.

No other point has been urged before this Court.

Consequently, the present bail application is dismissed.

22.08.2016.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No