

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Misc. No. M-29663 of 2016

Date of Decision: 14.09.2016

Buta Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr.K.S. Dhaliwal, Advocate for the petitioners.

Mr.Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA J.(Oral)

Prayer made in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioners in case FIR No.114, dated 25.06.2016 for offence under Section 18 of the NDPS Act, 1985, registered at Police Station, Patran, District-Patiala.

Learned counsel for the petitioners contends that the allegation against the petitioners is of recovery of 1 k.g. of opium which is non-commercial quantity. He further submits that though the petitioner approached the Special Judge, Patiala for the grant of regular bail, but the same was declined on the ground that morphine 3.14 % was detected in the sample as per report of FSL, therefore, the entire contraband recovered from the petitioners attracts serial No.77 and considering its quantity as 1 k.g. morphine, the recovery falls under the commercial quantity.

Learned counsel for the petitioners vehemently argued that the *opium* has been defined in Section 2 (xv) of the NDPS, Act 1985, which reads as under:

“*Opium*” means-

- (a) *the coagulated juice of the opium poppy; and*
- (b) *any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent of morphine.*

He relies upon a judgement of Delhi High Court passed in **Ravinder Kumar Vs. State (NCT of Delhi), 2010 (4) R.C.R. (Criminal) 664,** to contend that opium comprises of alkaloids, including morphine, morphine by itself does not constitute opium and, accordingly, morphine is nothing but opium derivative defined in Section 2(xvi) (c) of the Narcotic Drugs and Pyschotropic Substances Act. He further submits that the petitioners are in custody since 25.06.2016 and the alleged recovery is 01 k.g. opium which is non-commercial quantity. He also submits that trial in the case will take sufficient long time to conclude, as only challan has been presented in the case.

Learned counsel for the State does not dispute the custody of the petitioners. However, he submits that since the contents of morphine has been found from the recovery effected from the petitioners to the extent of 3.14 per cent, therefore, the whole quantity is to be taken as “*morphine*”.

I have heard learned counsel for the parties.

The fact as to whether the whole quantity recovered from the accused-petitioners is to be taken as the “opium” or “Morphine” is to be established during the course of trial.

Keeping in view of the law laid down in Ravinder Kumar's case (supra), coupled with the fact that the petitioners are in custody since 25.06.2016 and trial in the case will take sufficient long time to conclude, as only challan has been presented in the case, I deem it appropriate to allow the

present petition for grant of regular bail.

Accordingly, the present petition is accepted and the petitioners are ordered to be released on regular bail, subject to their furnishing bail/surety bonds to the satisfaction of the trial Court.

It is made clear that expression made here-in-above shall not be construed as an expression on the merits of the case and the trial Court shall be at liberty to decide the case on the basis of available evidence.

(HARI PAL VERMA)
JUDGE

14.09.2016
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No