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

**Date of decision: August 10, 2016
CRM-M-30074 of 2015**

Ravinder Kumar @ Sonu

.....Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-31300 of 2015

Manjit Singh @ Sherry

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Ms. Satwinder Kaur, Advocate for
Mr. Kushaldeep S. Sandhu, Advocate
for the petitioner (in CRM-M-30074 of 2015).

None for the petitioner (in CRM-M-31300 of 2015).

Mr. Shilesh Gupta, Addl. AG Punjab.

A.B. CHAUDHARI, J (Oral)

Heard learned counsel for the rival parties.

Learned State counsel, on instructions from Assistant Sub
Inspector Rashpal Singh, states that out of 15/20 bottles of Rexcof, only
one bottle was sent for sampling.

Learned counsel for the petitioners citing the judgment of
Hon'ble Supreme Court in the case of **Gaunter Edwin Kircher versus
State of Goa, Secretariat Panji, Goa**, 1993 SCC (Cri) 803 and
particularly Para-5 thereof, contended that there is the fundamental defect
and prima-facie, the petitioners cannot be hold guilty of having narcotic
substance in violation of provisions of the NDPS Act.

Learned State counsel states that it appears to be the practice of

the police officer for seizing the contraband and sending only one bottle for test when there is seizure of large or multiple number of bottles.

In that view of the matter, I am inclined to grant bail to the petitioners. Hence, this petition is allowed. Petitioners be released on bail subject to the satisfaction of the learned Chief Judicial Magistrate concerned.

Learned State counsel is directed to file an affidavit of the head of the Narcotic Bureau concerned in the instant cases as to whether the procedure of sending one bottle only out of 15/20 bottles after sampling, for test would meet the mandates of law or not and also to explain what are the rules and regulations or the guidelines as to the mode and manner in which the samples are required to be collected in such type of cases where multiple or large number of bottles are seized by the police and as to why such a practice of sending one bottle out of 15/20 bottles is being followed. Prima-facie, in my mind, such a course of action is bound to destroy the prosecution cases which cannot be allowed. In that view of the matter, the affidavit to the above effect be filed on or before 24.08.2016. Post the matter on 26.08.2016 for further hearing, though, these petitions have been disposed of granting bail to the petitioners.

A copy of this order be given to the learned State counsel under the signatures of the Bench Secretary.

(A.B. CHAUDHARI)
JUDGE

August 10, 2016

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No