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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18874-2017

Date of Decision:- 03.11.2017

Raj Tilak

....Petitioner

Versus

State of U.T.

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Kamal Chaoudhary, Advocate,
for the petitioner.

Mr. J.S.Toor, APP for U.T. Chandigarh.

SHEKHER DHAWAN, J.

Present petition under Section 439 Cr. P.C., for grant of regular bail in case bearing FIR No.24 dated 27.01.2017 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act"), at Police Station Sector 39, Chandigarh.

2 Petitioner was found to be in possession of 3 grams of heroine; 24 injections of Buprenorphine, containing 2 Ml. each and 24 injections of Pheniramine Maleate, containing 10 Ml. each.

3 Learned counsel for the petitioner contended that the petitioner has been falsely implicated in this case. At the time of alleged recovery, no Gazetted Officer was called and even the petitioner was not asked regarding the search by some Magistrate. As there was complete non-compliance of Section 50 of the Act, the petitioner is entitled to be released on bail. On this point, reliance was placed on the judgment of

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Hon`ble Supreme Court in **Union of India Vs. Mohanlal & Another, 2016(1) R.C.R. (Criminal) 858** and judgment of Hon`ble Karnataka High Court in **A.V.Dharmasingh and others Vs. State of Karnataka by the State Public Prosecutor, Banalore, 1993 CrILJ 94.** The total quantity recovered from the petitioner is not a 'commercial quantity' as 24 injections of Pheniramine Maleate does not fall within the purview of the Act.

4. Learned State counsel while opposing the present application mainly contended that the petitioner is a habitual offender and he is involved in one more case under the Act bearing FIR No. 292 dated 23.09.2016 registered under Section 20 of the Act at Police Station, Sector 39, Chandigarh. So, he is not entitled to be released on bail as per view taken by Hon`ble Division Bench of this Court in **Daler Singh Vs. State of Punjab, 2007(1) R.C.R. (Criminal) 316.**

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the alleged recovery from the petitioner is of commercial quantity, i.e. 48 MI of 24 injections of Buprenorphine. As regards to the plea, that it was a case of non-compliance of Section 50 of the Act, that shall be matter of evidence which is yet to be led in this case and on this ground, the petitioner is not entitled to be released on bail at this stage. Such a view was taken by Co-ordinate Bench of this Court in **Amandeep alias Deepa Vs. State of Punjab, 2014(3) R.C.R. (Criminal) 93.** More so, the petitioner is a habitual offender and he is regular in conflict with law as he is also involved in one more case and as per view taken by this Court in **Daler**

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Singh's case (supra), the petitioner is not entitled to be released on bail.

6. Resultantly, the present petition stands dismissed.

03.11.2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
No