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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30455-2017

Date of Decision:- September 22, 2017

Surinder Kaushal

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. R.S.Rana, Advocate,
for the petitioner.

Mr. RBS Chahal, Addl.A.G., Punjab
for the respondent State.

SHEKHER DHAWAN, J.

Present petition under Section 439 Cr. P.C., for grant of regular bail in case bearing FIR No.95 dated 24.4.2016 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act"), at Police Station City Rajpura, District Patiala.

2. The petitioner was allegedly found to be in possession of 50 bottles of intoxicant liquid weighing 100 ml. each and as per sample, the intoxicant liquid was found to be Codeine Phosphate.

3. Learned counsel for the petitioner contended that as per the prosecution case, the alleged recovery is of 50 bottles of intoxicant liquid weighing 100 ml. each, whereas sample of only two bottles was sent to the Forensic Science Laboratory (FSL) and as per the FSL report, the average quantity of Codeine Phosphate is 8.6 mg/5 ml. and that way, the

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recovery from the present petitioner is not of 'Commercial Quantity' because the total recovery in this case cannot be attributed to the petitioner as the sample was not representative one. On this point, reliance was placed upon the judgment from Hon`ble Apex Court in **Gaunter Edwin Kircher Vs. State of Goa, Secretariat Panji, Goa, 1993 AIR (SC) 1456** and decision from a Co-ordinate Bench of this Court in **Criminal Misc. No. CRM-M-15582-2017, Jaspreet Singh alias Laddi Vs. State of Punjab**, decided on 9.5.2017. The petitioner is in custody since 12.07.2016 and the decision of the case still to take some more time. So the petitioner be released on bail.

4. Learned State counsel contended that at this stage, no case is made out to come to the conclusion that the recovery effected from the petitioner was two bottles only. Rather, representative sample was sent and if the total recovery of 50 bottles of intoxicant liquid is taken into consideration, the alleged recovery from the petitioner is commercial quantity and as per provisions of Section 37 of the Act, the present petitioner is not entitled to be released on bail. So, the bail application be dismissed.

5. Having considered the submissions made by learned counsel for the parties and the fact that undisputedly, the sample of two bottles of intoxicant liquid were sent, which were found to be containing Codeine Phosphate, it shall be matter of decision during trial on the basis of positive evidence, whether the sample can be taken to be representative sample of 50 bottles or the alleged recovery is to be taken to be of two bottles alone, but taking into consideration the fact that the petitioner is not

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involved in any other similar case under the Act and he is in custody since 12.07.2016 and as per the view taken by Hon`ble Apex Court in **Gaunter Edwin Kircher's** case (supra), the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of CJM/Area Magistrate, Patiala.

6. The petition stands allowed.

September 22, 2017
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(**SHEKHER DHAWAN**)
JUDGE

Speaking/Reasoned
Reportable

Yes
No