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

CRM-M No.11427 of 2018
Date of Decision: 23.03.2018

Sarfraj @ Sahil

.....Petitioner

Vs

Union Territory, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mandeep Singh, Advocate
for the petitioner.

Mr. Karan Pathak, Advocate for
Mr. Gautam Dutt, A.P.P., UT, Chandigarh.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.237 dated 18.12.2017, registered under Section 22 of the NDPS Act at Police Station Mauli Jagran, Chandigarh.

2. The alleged recovery from the petitioner is of 15 injections (2 ml each of Buprenorphine) and 15 injections (10 ml each of Pheniramine Maleate).

3. FSL report has been received and challan has already been presented. One of the prosecution witness has already been examined.

4. The controversy with regard to Buprenorphine at Serial No.169 of the notification/Schedule of the NDPS Act, would be debatable as to whether it is a psychotropic substance or not.

5. As per proviso to Rule 66 of NDPS Act, 1985, an individual can possess 100 doses of Buprenorphine Hydrochloride.

6. In view of ratio laid down in **Ajaib Singh Vs. State of Punjab, 2012 (2) RCR (Criminal) 330**, Buprenorphine does not falls under Drugs and Cosmetics Act, therefore, provision in terms of Section 8 of the Act would not apply. In **Kismat Singh Vs. State of Punjab, 2012 (2) RCR (Criminal) 329**, the same proposition was endorsed, however, a contrary view has been taken in **Dilip Kumar Virvani and others Vs. State of Chattishgarh, 2014 (35) RCR (Criminal) 329**.

7. In view of above, it would be debatable as to the contraband falling under the ambit of Psychotropic substance or not.

8. This fact has not been disputed by learned State counsel on instructions from ASI Som Raj.

9. In view of above, petition is allowed. Petitioner is ordered to be enlarged on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial

Court.

10. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

23.03.2018
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No