

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

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CRM-M No. 156 of 2018
Date of Decision: 12.01.2018

BITTU KUMAR @ SONU

-PETITIONER

VS

STATE OF PUNJAB

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rakesh Gupta, Advocate,
for the petitioner.

Mr. Hittan Nehra, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner seeks grant of regular bail under Section 439 Cr. P.C. in case bearing FIR No. 244 dated 29.9.2017, registered under Section 22 of the NDPS Act registered at Police Station City Rajpura, District Patiala.

Raid was conducted at the house of co-accused Tejinder Singh @ Prince on the basis of information submitted by special informer. Seven boxes of liquor containing 12 bottles each, make EMPIRE No. 1 brand were recovered from the house of Tejinder Singh @ Prince. When individual search of Tejinder Singh @ Prince and the petitioner were made, 1860 tablets of Iomotil were recovered from Tejinder Singh @ Prince. 140 tablets of Iomotil and 145 tablets of Alprazolam were

recovered from the petitioner.

As per FSL report, average weight of limotil was found to be 60 mg per tablet and average weight of Alprazolam was found to be 136 mg per tablet. If calculations are made on the basis of FSL report, total weight of tablets of limotil would come out to be 8.4 grams and that of Alprazolam to be 14.28 grams. Lomotil tablets contained salt of Diphenoxylate hydrochloride which is the manufacturing drug, as per Government of India Notification No. SO 826 (E) 14.11.1985 and SO 40(E) dated 29.01.1993. Manufacturing drugs are punishable under Section 21 of the NDPS Act whereas psychotropic substances drugs are covered under Section 22 of the NDPS Act. In view of **CRM No. 33973 of 2016 in CRA-S-1614-SB of 2014 titled as Deepak Kumar versus State of Punjab, CRM No. 9547 of 2016 in CRA-S-4081-SB of 2014, titled as Kulwinder Singh versus State of Punjab**, the issue is debatable as to the trial of manufacturing drug under Section 22 of the NDPS Act.

Alprazolam is covered as per Serial No. 30 of the Schedule appended to NDPS Act, 1985 but in view of recommendations of the Review Committee, Alprazolam is also covered under Schedule (H) of the Drugs and Cosmetics Act, 1940. In view of **Rachhpal Singh @ Goldi versus State of**

Punjab decided on 15.02.2017 in CRM-M No. 34998 of 2016, Punjab Singh @ Punjab Versus State of Punjab decided on 28.02.2017 in CRM-M No. 6108 of 2017, Balwinder Singh @ Laddi versus State of Punjab decided on 28.02.2017 in CRM-M No. 41559 of 2016 and Parveen @ Dunga versus State of Punjab decided on 11.03.2014 (33) RCR (Criminal) 46, the applicability of both the Acts would be debatable.

Prima-facie this Court finds that the weight of individual contraband falls under non-commercial quantity as per enquiry No. 178 qua Alprazolam and enquiry No. 44 in respect of Diphenoxylate Hydrochloride.

At this stage, without commenting anything on the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

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

12.01.2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No