

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

**CRM-M-19918-2018 (O&M)**

Date of Decision:- 29.10.2018

Baljit Kumar

... Petitioner

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Naveen Sharma, Advocate, for the petitioner.

Ms. Ruchika Sabherwal, AAG, Punjab.

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**GURVINDER SINGH GILL, J.**

Petitioner Baljit Kumar has filed this petition seeking grant of regular bail in respect of a case registered against him vide FIR No.219 dated 5.8.2017 under Section 22 of NDPS Act, Police Station Samrala, Ludhiana.

The allegations, in nutshell, are that on 5.8.2017, petitioner Baljit Kumar along with co-accused Kulwinder Kumar were apprehended by police party headed by ASI Malkiat Singh and each of the accused was found to be in possession of 16 injections of 'Buprenorphine' 2 ml. each.

Learned counsel for the petitioner has submitted that in fact upon chemical analysis the allegedly recovered contraband has been found

to contain 'Buprenorphine Hydrochloride' to the extent of about 298 mcg per ML as would be evident from the report of FSL (Annexure P-2) and that in other words the total quantity of 'Buprenorphine' in 16 injections works out to 0.004768 (.000298x16 injections) which is less than 1 gram and would fall within the category of 'small quantity'.

It has further been submitted that the present case has been investigated by the police officer who had effected recovery which has been held to be violative of principles of a fair trial. Learned counsel in order to hammer forth his submission places reliance upon a judgment of Hon'ble the Supreme Court reported as 2018 AIR (SC) 3853 Mohan Lal Vs. State of Punjab. The learned counsel has thus prayed for grant of regular bail.

On the other hand, the learned State Counsel has referred to note (4) inserted vide notification dated 18.11.2009 to earlier notification dated 19.10.2001 defining "commercial quantities" of various contrabands. The said note (4) reads as follows:

"(4) The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salt of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content."

The learned State counsel has thus submitted that in view of aforesaid notification dated 18.11.2009, it is not only the active ingredient of

contraband which is to be taken into account but the the entire recovered quantity of contraband. In other words even the neutral content would have to be included in the weight of the contraband.

As regards the contention of petitioner that the matter has been investigated by the recovery officer himself, the learned State counsel submitted that the police officer who apprehended the petitioner could not have known for certainty at that point of time as to whether the petitioner had committed any offence and it was only after the search of the petitioner had been effected that it came to be known that he was carrying contraband constituting an offence under NDPS Act but by the said time the relevant and important documents i.e. the document pertaining to extension of offer under Section 50 of NDPS Act, recovery memo and consequently arrest memo, 'ruqa' etc had already been prepared. The learned State counsel cites a judgment of Constitution Bench of Hon'ble the Supreme Court rendered in State of Punjab Vs. Baldev Singh 1993(3) RCR (Criminal) 533 wherein it has been held as follows:

“ The provisions of Sections 100 and 165 Criminal Procedure Code are not inconsistent with the provisions of the Narcotic Drugs And Psychotropic Substances Act and are applicable for effecting search, seizure or arrest under the Narcotic Drugs and Psychotropic Substances Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure comes across a person being in possession of the narcotic drugs or the psychotropic substance, then he must follow from that stage onwards the provisions of the Narcotic Drugs And Psychotropic

**Substances Act and continue the investigation as provided thereunder.** If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the Narcotic Drugs And Psychotropic Substances Act, who should thereafter proceed from the stage in accordance with the provisions of the Narcotic Drugs And Psychotropic Substances Act. In Balbir Singh's case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of Criminal Procedure Code in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 *per-se* does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view."

The learned State counsel has further submitted that in any case the grant of bail is governed under provisions of Section 37 of NDPS Act and that in view of the quantity recovered, it cannot be said that the petitioner is not guilty or that if released on bail he is not likely to commit the similar offence again.

I have considered rival submissions addressed before this Court. Since Notification dated 18.11.2009 still holds good and has not been struck down so far, the entire recovered quantity has to be taken into account and which would fall within the category of "commercial quantity". Bearing in mind the provisions of section 37 of NDPS Act and the present case being a case of recovery of "commercial quantity" and that it cannot be said at this stage that the petitioner is innocent or that if released on bail he would not

commit similar offence again, this Court does not find any ground for release of the petitioner on bail. The legal submissions raised on behalf of the petitioner are matters to be considered at the stage of trial in context of the entire evidence led by the prosecution and the accused and no finding as regards vitiation of investigation or trial can be returned at this stage.

There is no merit in this petition and the same is hereby dismissed.

**October 29, 2018**

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**(Gurvinder Singh Gill)**  
**Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No