

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

**Criminal Misc. No. M-22783 of 2018
Date of decision: 09.10.2018**

Rajwant Singh @ Raju Rajvir Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. DAG, Punjab
for the respondent-State.

Daya Chaudhary, J.

The present petition has been filed by petitioner-Rajwant Singh @ Raju Rajvir Singh under Section 439 Cr.P.C. for grant of regular bail in case FIR No.105 dated 04.08.2017 registered under Section 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 25/54/59 of the Arms Act at Police Station Fatehgarh Sahib, Punjab.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case. The alleged recovery is 90 injections of Avil and 90 injections of Buprenorphine. Each injection contained 0.26 mg/ml of Buprenorphine Hydrochloride. The alleged recovery is less than the commercial quantity of 20 gms. Learned counsel further submits that the petitioner is in custody since 04.08.2017. All the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence. The trial may take long time to

conclude and no purpose would be served by keeping the petitioner in custody. At the end, learned counsel for the petitioner submits that while rejecting the bail application filed by the petitioner, contention of the petitioner has not been taken into consideration and simply by mentioning that the recovery is commercial and the same has been found from the conscious possession of the accused-applicant, the bail application has been dismissed.

Learned State counsel has not disputed the custody period as well as alleged recovery but has opposed the submissions made by learned counsel for the petitioner on the ground of seriousness of the offence.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

As per allegations levelled in the FIR, total 90 injections of Avil and 90 injections of Buprenorphine Hydrochloride have been shown to be recovered from the petitioner. As per proviso to Rule 66 of the NDPS Act, an individual can possess 100 doses of Buprenorphine Hydrochloride. 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.

In view of the conflicting opinion given in ***Kismat Singh Vs. State of Punjab, 2012 (2) RCR (Criminal) 329*** and ***Ajaib Singh Vs. State of Punjab, 2012 (2) RCR (Criminal) 330***, wherein it was held that Buprenorphine falls under Drugs and Cosmetics Act and the salt has not been included in the Schedule I of the NDPS Rules, whereas as per

judgment in case *Dilip Kumar Virvani and others Vs. State of Chattishgarh, 2014 (35) RCR (Criminal) 329*, Buprenorphine Hydrochloride is a psychotropic substance within the meaning of Section 2 (xxiii) of the Act. Same issue was there in judgments of this Court in cases *Amandeep Vs. State of Punjab* (supra), *Sonu Vs. State of Punjab CRM-M No.30008 of 2017 decided on 06.10.2017* as well as *Sulakhan Singh @ Billa Vs. State of Punjab CRM-M No.1010 of 2018 decided on 24.01.2018*.

Accordingly, keeping in view the ratio of law laid down in the judgments passed by the Coordinate Benches in the above said cases and without commenting anything on the merits of the case, the present petition is allowed and petitioner, namely, Rajwant Singh @ Raju Rajvir Singh is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

09.10.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable No