

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

**Crl. Misc. No.M-29880 of 2018 (O&M)
Date of Decision: July 24, 2018.**

Damandeep Kumar

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Gupta, Advocate
for the petitioner (s).

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 164 dated 03.11.2017 registered for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short-NDPS Act), at Police Station Rahon, District SBS Nagar.

Heard.

Notice of motion.

On asking of the court, Mr. Amitoj Singh Dhaliwal, D.A.G., Punjab, who is present in the Court accepts notice and submits that intimation by Registry informing of fixation of the petition has already been received and record of the case is available with him.

Petitioner was arrested by police of Police Station Rahon,SBS Nagar and recovery of 20 injections of Buprenorphine containing 2 ml each

and 15 grams of intoxicant powder was effected from his possession.

Learned counsel for the petitioner has argued that 0.26mg per ml of Buprenorphine Hydrochloride was found in each vial by Forensic Science Laboratory in its report dated 12.02.2018, as such, the quantity of Buprenorphine was less than commercial. In support of his contention, he has referred to the observations of Kerala High Court in case of ***Salam Vs. Union of India 2008(1) KLT 498 (Law Finder Doc Id # 461769)*** and ***Ouseph alias Thankachan Vs. State of Kerala 2006 (2) R.C.R. (Criminal) 127.***

Learned State counsel has argued that the recovery of contraband Buprenorphine falls in commercial quantity as whole of the quantity of contraband and not the quantity of ingredients per ml is to be seen while ascertaining the quantum of recovery. Even otherwise, the petitioner is habitual offender. He is in custody in some other case registered against him for offence punishable under Section 21/22 of NDPS Act. In that case, he was released on bail on 15.05.2017 and he again indulged in trade of narcotics and was apprehended in this case on 03.11.2017.

The recovery of Buprenorphine effected from the petitioner falls in commercial quantity. Keeping in view the fact that he was earlier also involved in the similar offence, as such, there is no reason to record the observations on file that in the event, he is released on bail, he will not indulge in such type of trade. As per observations of Hon'ble Apex Court in case of ***Harjit Singh Vs. State of Punjab, 2011 (4) SCC 441***, the entire mixture and substance of which contraband is a part, is to be considered

while quantifying the quantum of recovery. Hon'ble Apex Court in the aforesaid case, has observed as follows:-

“The entire substance has to be considered to be opium as the material recovered was not a mixture and the case falls squarely under Entry 92. Undoubtedly, the FSL Report provided for potency of the opium giving particulars of morphine contents. It goes without saying that opium would contain some morphine which should be not less than the prescribed quantity, however, the percentage of morphine is not a decisive factor for determination of quantum of punishment, as the opium is to be dealt with under a distinct and separate entry from that of morphine.”

Keeping in view the restriction envisaged under Section 37 of NDPS Act, I find no merits in this bail application.

Dismissed.

July 24, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***