

S.No.210

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

CRM-M-45347 of 2018 (O&M)

Date of Decision:07.12.2018

Bagicha SinghPetitioner

Vs.

State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

Mr. Hittan Nehra, Addl. AG, Punjab.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 439 Cr.P.C for grant of bail pending trial in case FIR No.72 dated 08.08.2018 registered under Section 22 of NDPS Act, 1985 at Police Station Bahawwala, District Fazilka.

Learned counsel for the petitioner contends that the case against the petitioner is false and concocted one. There is no recovery effected from the petitioner; in accordance with the provisions of the NDPS Act. Otherwise also, the alleged recovery from the petitioner is of 250 tablets of Tricare-SR and 540 tablets of Lomotil. The tablet of Tricare consists of prohibited substance Trimadol. However, the quantity of the prohibited substance is only 3.75 mg per tablet. Hence, in the entire recovery, the quantity of prohibited substance comes to only less than one gram; which is much less than the commercial quantity prescribed for that prohibited substance. Similarly, the tablet of Lomotil consists of a prohibited substance dyphenoxylate hydrochloride. However, the quantity of this substance per tablet is only 2.5mg. Therefore, in the entire recovery, the total quantity of prohibited substance comes only to less than 1.5 grams.

Therefore, in case of each tablet, the quantity of prohibited substance allegedly recovered from the petitioner is less than commercial quantity. Counsel has relied upon the judgment of this Court in **CRM-M-35080 of 2018 – Rajvir Singh @ Raju v. State of Punjab** decided on 21.08.2018, to support his contention. It is further contended that the p[etitioner is in custody since 08.08.2018.

On the other hand, counsel for the State contends that the recovery from the petitioner is very heavy. Sheer number of tablets recovered from the petitioner shows that it could not have be an implanted recovery. However, since the report of the FSL has not been received, therefore, he is not able to comment upon the quantity of the actual prohibited substance; involved in the entire recovery. Counsel has also pointed out that there are three other cases against the petitioner, including the one under the NDPS Act. Hence, it is submitted that the petitioner does not deserve any concession of bail.

Be that as it may, the fact remains that as of today, there is nothing on record to substantiate that the petitioner is in custody for recovery of any prohibited substance, since the report of the FSL is yet to be received. But since the substance involved in the case is manufactured drug, therefore, the specifications for the same are prescribed by the manufacturer. The counsel's submission regarding the quantity of the actual prohibited substance in the recovery as per the manufacturer's details has gone un rebutted. Therefore, at this stage, it has to be presumed that the recovery from the petitioner is only of non-commercial quantity.

So far as other cases against the petitioner are concerned, counsel for the petitioner has submitted that the petitioner is already on bail in all those cases. The petitioner is not in custody in any other case except the present one; as of today.

In view of the submissions of counsel for the petitioner, but without commenting upon merits of the case, the present petition is allowed. It is ordered that the petitioner be released on bail on his furnishing bail bonds/ sureties to the satisfaction of the trial Court/ Duty Magistrate.

December 07, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No