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

**CRM-M No.4669 of 2018
Date of Decision: 09.02.2018**

SABIR MOHD. @ GOLLU

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Anureet S. Sidhu, Advocate
for Mr. Amjad Khan, Advocate
for the petitioner.

Mr. Hittan Nehra, Additional Advocate General Punjab.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.69 dated 29.05.2017, registered under Section 22/61/85 of NDPS Act at Police Station Fatehgarh Sahib, District Fatehgarh Sahib.

As per allegations in the FIR, 35 injections of Bupernorphine IP 2ml Omgesic and 35 injections of Avil 10 ml were allegedly recovered from the petitioner.

Learned counsel for the petitioner submits that as per proviso of Rule 66 of NDPS Act, 1985, 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 **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 (ixia) of the Act.

Learned counsel for the petitioner further submits that recovery of 35 vials of injections of Avil would not fall under the category of NDPS Act and the same is not covered under the schedule. _

Looking to the controversy from point of view of proviso to Rule 66 of NDPS Schedule as also qua the weight of the total contraband, it would be debatable as to the trial of present contraband under NDPS Act.

In view of the above, without adverting to the merits of

the case, it will be just and expedient to grant benefit of regular bail to the petitioner.

Let the petitioner be enlarged on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate.

Accordingly, this petition is allowed.

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

February 09, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No