

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

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**CRM-M No.13826 of 2019
Date of Decision: 22.4.2019**

Harjinder Kaur

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Bhavesh Aggarwal, Advocate for
Mr.Ashish Aggarwal, Advocate
for the petitioner.
Mr.A.K.Singal, Sr.DAG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.212 dated 20.12.2017, registered under Section 22 of the NDPS Act at Police Station Patti, District Tarn Taran.

At the very outset, learned counsel for the petitioner submits that in fact, present petition is the second petition for grant of regular bail. In the earlier petition i.e. CRM-M No.7892 of 2018, interim bail was granted to the petitioner vide order dated 28.2.2018. It was recorded that the petitioner was granted interim bail to the satisfaction of the trial Court with a clear stipulation that in the event of receiving positive FSL report, the petitioner shall surrender before the trial Court within

reasonable time to be specified by the trial Court.

The FSL report was received, wherein it was found that 10 white coloured loose tablets of average weight of 76 mg per tablet were received. On analysis Diphenoxylate Hydrochloride to the extent of 2.28 mg per tablet was detected. Diphenoxylate finds mention at Sr.No. 44 of the schedule, wherein 50 gms or above is the commercial quantity.

As per the prosecution case, the petitioner, who is a lady, was apprehended when she was walking with covered face and on seeing the police party she threw the polythene bag on the ground. On suspicion, she was stopped by the police party. On being asked, she disclosed her name to be Harjinder Kaur and further disclosed the presence of intoxicated tablets in the bag. No public witness came forward despite asking of the police. 8 blue coloured pouches labeled as Microlit were recovered. Each pouch was found containing 100 tablets. In this way, total 800 tablets of Microlit were recovered. The police collected 10 tablets from the recovered contraband and sent the same for chemical analysis. As per the allegations, there was no batch mark/ number on the pouch.

At this stage, without making any opinion on merits of the case, it can be seen that only 10 tablets were subjected to chemical analysis. The average weight of the tablets came out

to be 76 mg and total weight of the contraband was 60 gms. Factum of drawing of representative samples of 10 tablets would be debatable, whether the same will represent the total contraband in the context of FSL report.

In view of ratio laid down in **Gauter Edwin Kircher vs. State of Goa, Secretariat, Panaji, Goa, 1993 AIR (SC) 1456** and **State of Punjab vs. Dharam Singh, 2010(3) RCR (CrI) 94 (DB)**, the entire bulk has to be sent for chemical analysis. The factum of drawing of representative samples would also be debatable whether the same were drawn in the presence of Magistrate or not. Petitioner is in custody for the last more than five months. In another two cases of the like nature, she has been granted regular bail.

In view of aforesaid, without expressing anything on the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail subject to her furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court.

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

Petition stands disposed of accordingly.

April 22, 2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned: Yes/No Whether reportable: Yes/No