

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24046-2019(O&M)
Date of Order:20.08.2019

Neeraj

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate, for the petitioner.
Mr. Manish Bansal, DAG, Haryana

ANIL KSHETARPAL, J(Oral)

Petitioner prays for grant of regular bail in FIR No.519, dated 21.08.2018, registered under Sections 8, 21(c), 61 of the NDPS Act, at Police Station Bhiwani City.

Allegations against the petitioner are that he was carrying 99 bottles of cough syrup (Biorex). Learned counsel for the petitioner contends that the prohibited substance in the cough syrup is Codeine Phosphate. Each bottle contains 200mg and if it is multiplied by 99 bottles, it comes to 19.8 grams which is less than commercial quantity notified.

On the other hand, learned counsel for the State submits that the entire liquid is to be taken into consideration.

Investigations are complete, challan has been presented, charges have been framed. Prosecution has not examined any of the witness out of 12 proposed to be examined. Petitioner is in custody since 21.08.2018. As per Investigating Officer ASI Saggar Singh, he is not involved in any other case. The issue “whether neutral substance is to be

taken into consideration while determining the question as to whether the recovery falls in commercial quantity or not has been referred to a Larger Bench by the Hon'ble Supreme Court in the case of **Hira Singh and another vs. Union of India and another, (2017) 8 SCC 162.** The previous judgment passed by the Hon'ble Supreme Court in the case of **E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau, (2008) 5 SCC 161** is under consideration. It would be debatable as to whether neutral substance is to be considered while calculating the recovery or not?

Without commenting on the merits of the case and keeping in view the fact that the petitioner is in custody since 21.08.2018 and the trial of the case is likely to take a long time, the petitioner is directed to be released on regular bail subject to furnishing of adequate surety to the satisfaction of the trial Court/Duty Magistrate.

Accordingly, the present petition is allowed.

August 20, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No