

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

**Crl. Misc. No.M-41754 of 2019 (O&M)
Date of Decision: October 03, 2019**

Nikhil Mahajan @ Lakhan

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep S. Majithia, Advocate
for the petitioner.

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. 262 dated 14.07.2014 registered for the offence punishable under Section 21 of Narcotic Drugs and Psychotropic Substances, Act at Police Station Civil Lines, District Amritsar City.

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.

As per case of prosecution, three persons were apprehended on 14.07.2014 and contraband wrapped in plastic envelopes, which they tried

to throw away on taking it out from the pockets of their pants was recovered, which on weighing came to be 50 grams from each of these three accused namely Nikhil Mahajan @ Lakhan i.e petitioner, Karandeep Singh @ Karan and Sandeep Kumar @ Chela.

Learned counsel for the petitioner submits that recovery of contraband after the report of FSL was found to be that of *Diphenoxylate Hydrochloride*. The quantity of more than 50 grams of the above contraband falls in commercial quantity, as such, recovery from the petitioner is of less than commercial quantity.

Learned State counsel submits that recovery of 150 grams of *Diphenoxylate Hydrochloride* was effected from three persons which falls in commercial quantity of contraband. The petitioner was earlier released on interim bail and thereafter he was declared as proclaimed offender. He was apprehended on 02.09.2019 and may again abscond if bail is allowed.

While answering the query of learned State counsel, learned counsel the petitioner submits that the petitioner was allowed interim bail and challan was presented in his absence, as such, he was declared as proclaimed offender without notice.

The recovery from the petitioner is of 50 grams of *Diphenoxylate Hydrochloride* which falls in non-commercial quantity of this contraband. It will be for the trial Court to scrutinize prosecution evidence in order to find as to whether all the three accused were in conscious possession of contraband recovered from possession of other two.

In view of above facts, present petition is allowed. Petitioner- Nikhil Mahajan @ Lakhan is ordered to be released on regular bail on his

furnishing bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- a. The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- c. He shall not leave the country without the prior permission of the Court.

October 03, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

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

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