

103) **Crl. Misc. No.M-50792 of 2019 (O&M)**
Date of Decision: 18.12.2019

Versus

State of Punjab ...Respondent

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Present:- Mr. A.S. Khinda, Advocate, for the petitioner.
Mr. Sukhdeep Singh Bhinder, Advocate
for the petitioner in CRM-M-50346 of 2019.
Mr. B.S. Sewak, Addl. Advocate General, Punjab

Amol Rattan Singh, J. (Oral)

The application is allowed, subject to all just exceptions and the copies of the orders of the trial court dated 05.08.2019 and 31.10.2019 are ordered to be taken on record as Annexures A-1 and A-2 respectively, with the accompanying petition.

By this petition, filed under the provisions of Section 439 of the Cr.P.C., the petitioner seeks the concession of 'regular bail'.

On 13.12.2019, the following order had been passed by this court in this petition, by which the petitioner seeks to be admitted to bail:-

“Learned counsel for the petitioner refers to various paragraphs in the case of **Rajvir Singh @ Raju v. State of Punjab**, (2018) 4 RCR (CrI.) 375, and upon a query put to him with regard to how the notification of the Government of India dated 18.11.2019 can be ignored, he points to paragraph 36 of that judgment, which reads as under:-

“36. Learned State counsel has tried to distinguish the above said judgment of the Hon'ble Supreme Court by arguing that this judgment was rendered before the Notification dated 18.11.2009 was issued by the Government which added Note 4 to the table of psychotropic substance. Therefore, it is contended by the learned State counsel that since the judgment has not taken into consideration the relevant provisions of law, therefore, the same is per incuriam and has no significance after 18.11.2009. However, this Court finds that even the Hon'ble Supreme Court was apprised of all the material including Note dated 18.11.2009, which is being relied upon the State counsel now to contend that E.Micheal Raj's case (supra), has been rendered insignificant. Despite that the Hon'ble Supreme Court has said that the judgment of the Supreme Court in E. Micheal Raj's case (supra), is binding upon the subsequent Bench of the same Court, which was considering the matter in Hira Singh's case (supra) in the year 2017. Hence by no means, it can be said that the judgment of the Hon'ble Supreme Court rendered in E. Micheal Raj's case (Supra), has lost its significance. This holds the field till today.”

For him and the learned State counsel to point out as to in which judgment it was held that despite the aforesaid notification, the ratio of the judgment in **E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau**, (2008) 2 RCR (CrI.) 597, would continue to hold the field, adjourned to 18.12.2019.

This would be looked into especially in view of what the

learned State counsel has submitted to the effect that at the time that the judgment in **E. Micheal** was rendered, the aforesaid notification in fact was not in existence.

Learned counsel for the petitioner has also relied upon an order of a coordinate Bench of this court passed in Anil Kumar @ Nehla v. State of Punjab (CRM-M-28002 of 2018, decided on 01.10.2018), wherein after expressing reservations on the ratio of the judgment in Rajvirs' case (supra), the matter has been referred to a Division Bench of this Court.”

Today, learned counsel for the petitioner submits that the quantity of the contraband allegedly recovered from him, even if it is taken to be commercial quantity in terms of the Notification of 2009, i.e. the “entire material” as is stated to have been in possession of the petitioner when he was apprehended (as per the case of the investigating agency), it would still amount to only being marginally above the commercial quantity, the alleged recovery being of 324.54 grams of 'Tramadol Hydrochloride', which factual position is not disputed by the learned State counsel, though he opposes the admission of the petitioner to bail.

It is considered appropriate, in view of the fact that the matter has been referred to a larger Bench by the Supreme Court and to a Division Bench by a coordinate Bench of this court, that the petitioner be admitted to bail during the pendency of the trial, with it also not denied that there is no other criminal case shown to be registered against him.

Consequently, without making any comment on the actual

merits of the case, for or against the petitioner, he is ordered to be admitted to bail to the satisfaction of the trial court.

The petition is disposed of accordingly.

Of course, it is to be noticed at this stage in this petition itself, that if a large quantity of contraband is shown to be recovered (as per the case of the investigating agency), in any particular case, then whether or not an accused should be admitted to bail or not in the light of the fact that the question of 'measurement of quantity' has been referred to a larger Bench by the Supreme Court, would, in the opinion of this court, be dependent upon the quantity of contraband actually shown to be recovered (as per the "entire material" recovered), seen with the antecedents of any particular accused.

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For the reasons already given hereinabove in the connected petition, with the 'tramadol hydrochloride' recovered from the petitioner in this petition being 322.91 grams, without making any comment on the actual merits of the case, for or against the petitioner, this petition is also allowed, with the petitioner ordered to be admitted to bail to the satisfaction of the trial court.

It is also again noticed in this case that as per the instructions of the learned State counsel, there is no other criminal case shown to be registered against the petitioner.

18.12.2019
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(Amol Rattan Singh)
Judge

Whether reasoned/speaking: Yes
Whether reportable: Yes