

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

**Criminal Misc. No. M-43036 of 2018
Date of decision: 31.01.2019**

Teja Singh alias Jagdev Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. G.S. Hayer, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent -State.

Daya Chaudhary, J. (Oral)

Petitioner Teja Singh alias Jagdev Singh has approached this Court by way of filing the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.242 dated 25.10.2017 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') registered at Police Station Lambi, Distt. Sri Muktsar Sahib, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas he was not involved. As per the allegations in the FIR, 30 injections marked as Omgesic (Buprenorphine) weighing 2 ml each and 30 injections marked as Avil (Pheniramine Maleate) weighing 10 ml each were found in the bag carried by both the accused persons on a motorcycle. Accused person could not produce any bill of purchase or valid licence with regard to possession of said injections. Learned counsel further submits that as per case of the

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prosecution, samples of the recovered injections were withdrawn from the total quantity of the recovered injections and three respective parcels were prepared which were sent for chemical examination. On the basis of chemical analysis, FSL report was prepared. Learned counsel also submits that bail application filed by the petitioner was dismissed only on the ground that it is a commercial quantity. Learned counsel further submits that as per report of the chemical examiner, the contents of Buprenorphine Hydrochloride present in the Omgesic is 297 mcg/ml. As per calculation, it comes to be 17.82 mg for the total quantity of 30 injections which were confiscated, whereas small quantity of Buprenorphine prescribed as per notification dated 19.10.2001 the commercial quantity is 20 gms. In the present case, it is the small quantity. Learned counsel also submits that the alleged recovery does not fall within the purview of the NDPS Act and the embargo laid down under Section 37 of the NDPS Act is not applicable. The petitioner is in custody since lodging of the FIR 25.10.2017.

In support of his arguments, learned counsel for the petitioner has relied upon judgment of Hon'ble the Apex Court in case *Sajan Abraham Vs. State of Kerala 2004 (2) RCR (Criminal) 137* and judgments of this Court in cases *Amandeep Vs. State of Punjab CRM-M No.250 of 2018 decided on 12.01.2018*, *Dr. Rajinder Singla Vs. State of Punjab CRM-M No.37530 of 2015 decided on 18.11.2015* and *Vikas Sehgal Vs. State of Punjab 2010 (3) RCR 70*.

Learned State counsel has not disputed the custody period undergone by the petitioner and the alleged recovery but has opposed the

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submissions made by learned counsel for the petitioner on the grounds of seriousness of offence.

Heard arguments of learned counsel for the petitioner as well as learned State counsel. I have also perused the contents of the FIR and other documents on the file.

As per the allegations in the FIR, the total recovery from both the accused is 30 injections marked as Omgesic (Buprenorphine) weighing 2 ml each and 30 injections marked as Avil (Pheniramine Maleate) weighing 10 ml each. As per proviso to Rule 66 of NDPS Act 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 judgment in case ***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 (xxiii) of the Act. Same issue was there in judgments of this Court in cases ***Amandeep Vs. State of Punjab*** (supra), ***Sonu Vs. State of Punjab CRM-M No.30008 of 2017 decided on 06.10.2017*** as well as ***Sulakhan Singh @ Billa Vs. State of Punjab CRM-M No.1010 of 2018 decided on 24.01.2018***.

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Accordingly, keeping in view the ratio of law laid down in the judgments passed by the Coordinate Benches in the above said cases and without commenting anything on the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of the trial Court.

31.01.2019
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No