

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

208

**CRM-M No.2831 of 2019
Date of Decision: 13.1.2020**

SUNIL BHATI @ SUNIL KUMAR BHATI

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr.Ramandeep Sandhu, 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.100 dated 20.8.2018, registered under Section 22 of the NDPS Act at Police Station Sirhind, Tehsil and District Fatehgarh Sahib.

As per allegations in the FIR, 70 injections of Buprenorphine I.P Omgesic 2 mls. each and 30 injections of Avil 10 ml each have been recovered. The recovery is alleged to be commercial in nature.

The controversy as regards to Buprenorphine at Sr. No.169 of the notification/ Schedule of the NDPS Act, whether would be a psychotropic substance or not, will be a debatable issue in the light of conflicting opinions rendered in **Kismat**

Singh vs. State of Punjab, 2012 (2) RCR (Criminal) 329 and Ajaib Singh vs. State of Punjab, 2012 (2) RCR (Criminal) 330 on the one hand and Dilip Kumar Virvani and others vs. State of Chhattisgarh, 2014 (35) RCR (Criminal) 329 on the other hand.

One of the view is that the Buprenorphine falls under Drugs and Cosmetics Act and the salt has not been included in the Schedule I of the NDPS Rules, whereas, second view is that Buprenorphine Hydrochloride is a psychotropic substance within the meaning of Section 2 (ixia) of the NDPS Act.

In view of above, it would be debatable as to the trial of the contraband under the NDPS Act.

Learned counsel for the petitioner also highlighted that the weight of the total contraband would remain debatable in view of not sending the entire bulk to FSL. In Hira Singh and another vs. Union of India and another 2017 (3) RCR (Criminal), 633, the issue has been referred for consideration to larger Bench. The said issue with regard to the quantity, whether it is commercial or not, can be appreciated only after the answer by the reference Court in Hira Singh's case (supra).

At this stage, without meaning anything on the merits of the case, it would be just and appropriate to enlarge the

petitioner on regular bail.

In view of above, this petition is allowed. Petitioner is ordered to be released on bail, subject to his 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.

January 13, 2020

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No