

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19562-2020 (O&M)

Date of Order: 13.10.2020

Kamalveer Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate, with
Mr. Vipul Aggarwal, Advocate,
for the petitioner.

Ms. Samina Dhir, DAG, Punjab

ANIL KSHETARPAL, J(Oral)

Hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

This is second petition for grant of bail pending trial in a criminal case arising from FIR No.416, dated 20.12.2018, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station City Rajpura, District Patiala.

The first petition for grant of bail filed by the petitioner was disposed of on 04.12.2019 along with another petition filed by a co-accused with the following order:-

“By this order, CRM-M-23136-2019 and CRM-M-36677-2019 arising from a common criminal case registered vide FIR No.416, dated 20.12.2018, registered under Section 22 of the NDPS Act, at Police Station City Rajpura, District Patiala, shall stand disposed of.

As per the case of the prosecution, Kamalveer Singh, Sandeep Singh an Karamjit Singh were travelling in a car and on being checked, it was found

that the accused are in conscious possession of 40 injections labeled as 'LEEGESIC' sale Buprenorphine Hydrochloride and 40 injections of Avil containing salt Pheniramine Maleate. It is not contested that 40 injections of Avil does not contain any prohibited substance.

*Petitioners are in custody since 21.12.2018. Each vial had 2ml liquid. At this stage, it would be debatable as to whether the alleged recovery from the petitioners falls in commercial category or not? The question as to whether actual contents of the prohibited substance or the entire drug which also has neutral substances are to be considered for determining the quantity allegedly recovered is pending consideration before the Larger Bench of the Hon'ble Supreme Court in the case of **Hira Singh and another vs. Union of India and another (2017) 8 SCC 162.***

In view thereof, this court is not inclined to order release of the petition on bail, at this stage. The present petition is disposed of by observing that petitioner shall be entitled to move a fresh application after the references by the larger Bench are decided.”

At this stage, it would be appropriate to note that the three Judges Bench in **Hira Singh and another vs. Union of India and another**, Criminal Appeal No.722 of 2017 has been pronounced its judgment on 22.04.2020. The Supreme Court has reversed its previous view in **E. Micheal Raj vs Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC, 161.** It has been held that quantity of one or more neutral substances in a mixture cannot be excluded while determining the quantity of the narcotics/psychotropic substances for determining the category of commercial quantity.

This court has heard learned senior counsel for the petitioner and learned Deputy Advocate General, Punjab.

Although, Sh. Aggarwal, Sr. Advocate, has addressed lengthy arguments, however, all the contention put forth stands examined by the Hon'ble Supreme Court in another three Judge Bench judgment in **Union of**

India vs. Sanjeev B. Deshpandey, (2014) 13 SCC 1. The judgment passed by the Delhi High Court in the case of *Rajinder Gupta vs. State (Delhi), 2005(16) R.C.R.(Criminal), 264,* has been over-ruled. It has been held while interpreting Section 8(C) of NDPS Act 1985 prohibit production, manufacture, possession, trading, transportation, warehousing, usage, consumption etc. of any narcotic drug or psychotropic substance.

In view of the aforesaid, 40 injections having Buprenorphine Hydrochloride salt are alleged to have been recovered from the petitioner and his co-accused. Each vial is reported to contain 2ml liquid. The total quantity comes to 80 ml.

Ms. Samina Dhir, Deputy Advocate General, Punjab, has pointed out that 80 ml mixture with Buprenorphine Hydrochloride falls in the category of commercial quantity.

In view thereof, there is no ground to grant bail to the petitioner more particularly keeping in view the rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Hence, dismissed. However, learned trial court is requested to expedite the conclusion of the trial of case after normal functioning of the court resume.

13th October, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No