

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

CRM-M-44909-2019 (O&M)

Date of decision: 06.03.2020

Kawalgeet @ Kawaljeet

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Sandeep Kotla, Advocate for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner Kawalgeet @ Kawaljeet, aged about 26 years, an accused in FIR No.155 dated 29.06.2018, for offences under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Sadar, Ambala.

Briefly stated facts of the case as per prosecution version are that on 29.06.2018 at about 9.40 PM, in the area of Village Singawala, a police party headed by ASI Sukhdeep Singh apprehended petitioner/accused Kawalgeet @ Kawaljeet and he was found in possession of polythene containing 18 injections of OMGESIC (Buprenorphine Injections 2 ML). Accused was accordingly arrested in this case. The contraband recovered from him was also seized. As per

report received from FSL, each injection contained 0.3 mg/ml of Buprenrphine Hydrochloride. The accused is stated to be mentally retarded.

Accused had moved an application for regular bail before Court of Sessions at Ambala, however, that petition was dismissed by Addl. Sessions Judge, Ambala, vide order dated 05.10.2019. The operative part of order is as under:-

“Allegations against the petitioner are serious in nature that he was found in his possession 18 OMGESIC Injection (Buprenrphine Hydrochloride 2 ML). There is no dispute about proposition of law settled in Rajvir Singh's case (Supra). However, after passing of judgment in the cited case, bail application filed by petitioner in Hon'ble Punjab & Haryana High Court had been dismissed as withdrawn on 01.11.2018. Thereafter, petitioner again approached Hon'ble High Court for bail but the application has. again been dismissed as withdrawn with a liberty to petitioner to file an application before the trial under Chapter 25 of the Code of Criminal Procedure for assessing his mental retardness. Petitioner had already been taken to PGI and report is likely to be filed in near future. Thus, keeping in view gravity of offence and seriousness of allegations and the facts and circumstances mentioned above, no ground is made out to grant concession of bail to the petitioner at this stage and accordingly, finding no merits, the bail application stands dismissed. Papers be attached with main file.”

Feeling aggrieved, the petitioner has approached this

Court, craving for grant of the similar relief, which request is being opposed by State counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has argued that petitioner is mentally unwell and further even if it is believed that he was found in possession of the contraband, it is less than commercial quantity. The accused is in jail since long. Therefore, the benefit of regular bail be granted to him. In support of his contention, learned counsel has referred to judgment **Sajan Abraham Vs. State of Kerala, 2004 (2) RCR (Criminal) 137 by the Apex Court, Nitin Rajput @ Raman Vs. State of Punjab, 2019 (1) Law Herald 69** by a Co-ordinate Bench of this Court.

Whereas, learned State counsel has submitted that the petitioner is not entitled to get bail because the contraband recovered from him was of considerable quantity. She has referred to copy of notification issued by Department of Revenue, Ministry of Finance on 18.11.2009, wherein in the table at the end after Note 3, the following Note was ordered to be inserted, namely :-

“4. The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution/or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible

and not just its pure drug content."

Learned State counsel has further referred to order by a Co-ordinate Bench of this Court in **Anil Kumar @ Nehla Vs. State of Punjab** in CRM-M-28002-2018 dated 01.10.2018. According to learned State counsel, the entire mixture or solution of contraband has to be considered while determining whether the quantity recovered is small or commercial. It was observed that each injection of 2 ml volume weighs approximately 2 gm as the density of the liquid is approx. 1 gm per cubic centimeter. In that judgment, while referring to the affidavit of Assistant Director (Toxicology), FSL, Mohali, it was observed that according to the affidavit, weight of contents of 2 ml injection is 2.0318 gms. The volume of contents of the said injection is 2 ml. Which is equal to 2 cubic centimeter. Therefore, the density works out to 1.0159 gms per cubic centimeter. The question as to whether the pure content of narcotic drug/psychotropic substance alone is to be taken into consideration for determining small or commercial quantity was decided. As per custody certificate filed by State counsel, the petitioner has undergone 01 year 06 months and 29 days till date. At this stage, while deciding the question as to whether the petitioner is entitled to regular bail or not, the merits of the case may not be gone into. The yardstick for grant of bail is definitely different from the parameters laid down for conviction/acquittal of the accused. Without touching the merits of the case with regard to question whether it

amounts to commercial quantity or small quantity, it comes out that petitioner was engaged in drug trafficking, since he could not give reasonable or plausible explanation for possession of such number of injections. It is not his case that he is a chemist or that he has been getting those injections himself as a part of medical treatment.

Referring to judgment **Sajan Abraham** (supra), learned counsel for the petitioner argued that a person possessing psychotropic substance below specified quantity for personal consumption does not require any permit but then it has to be seen whether the petitioner required contraband for his personal consumption. The judgment in question was on merits whereas the petitioner here is asking for regular bail. This is 3rd bail application which goes to show that his request for grant of bail on two earlier occasions was not accepted with. If he released on bail, there is every possibility of absconding, trying to threaten or induce the prosecution witnesses and his possibility of taking to drug trafficking and path of crime again. Therefore, it is not found proper and appropriate to grant the benefit of regular bail to the petitioner. His request in that regard stands declined and the petition is dismissed accordingly.

06.03.2020

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No