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

**CRM-M-1847 of 2023
Date of Decision:23.1.2023**

Arjan Bajaj **.....Petitioner**
Vs.
State of Punjab **.....Respondent**

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Kulwinder Bhargav, Advocate for the petitioner.

Mr. R.S. Khaira, DAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 Cr.P.C., prayer is made to release the petitioner on regular bail in case FIR No.158 dated 01.09.2021 registered at Police Station Lalru, District SAS Nagar, Mohali under Section 22 (Act No.61) of Narcotic Drugs and Psychotropic Substances Act, 1985.

Allegations are that on 01.09.2021, petitioner and co-accused Shubham alias Monu were found carrying separate bags on their shoulders. Due to their suspicious activities, they were apprehended. From the bag of Shubham alias Monu 484 strips, each strip containing 60 tablets each i.e. totalling 29,400 tablets of I.P. Lomotil were recovered. Similarly, from the bag carried by Arjan Bajaj (present petitioner), 300 strips each strip containing 60 tablets each i.e. totalling 18,000 tablets of IP Lomotil were recovered. Necessary samples were drawn and the substance so recovered from the petitioner and co-accused were taken into possession.

It is contended by learned counsel for the petitioner that as per the FSL report, the sample tablet on analysis was found to contain

Diphenoxylate Hydrochloride to the extent of 2.4 mg and Atropine Sulphate. Average weight of each tablet was 64 mg. It is alleged that in this way, petitioner is shown to have possessed a total 432 gram of Tramadol Hydrochloride which is of commercial quantity. Learned counsel contends that each single tablet contained 2.4 mg of Tramadol Hydrochloride which is permissible as per notification dated 14.11.1985. Learned counsel has referred to **Sehbaj Singh @ Baj Vs. State of Punjab, - CRM-M-48317 of 2017 (O&M)**, wherein a co-ordinate Bench of this Court referred to **Balkar Singh Vs. State of Punjab, - CRM-M-27245 of 2012** ; and **Kashmir Singh Vs. State of Punjab, 2012(1) RCR (Criminal) 684**. In **Kashmir Singh's case (supra)** it was held as under:-

"Notification dated 14.11.1985 deals with Diphenoxylate with its salts and preparations, admixtures, extracts or other substances at serial No.58. A preparation having not more than 2.5 mg. of Diphenoxylate equal, to which atropine sulphate equivalent to at least one per cent of the dosage of Diphenoxylate is added would not fall in the definition of manufactured drug as per the entry at Sr. No.58. In the case in hand, the contents of Diphenoxylate Hydrochloride , as per the chemical examination, was found to be 2.3 mg and 2.4 mg per tablet in the two samples. The contents of Atropine sulphate was less than 1 per cent of that and , therefore, as per the notification dated 14.11.1985 at entry no.58, the tablets in hand would not fall within the definition of manufactured drugs.

When the Review Committee has opined that the drugs Diphenoxylate Hydrochloride and Atropine sulfate are in Schedule H of Drugs and [Cosmetics Act](#), 1940, it cannot be said that the petitioner is

liable to be prosecuted under the Act only for the reason that he did not have a chemist licence for keeping the same."

It is contended further that the same view has been taken by a co-ordinate Bench of this Court in **CRM-M-33069 of 2013 Charno Vs. State of Punjab**; and Himachal Pradesh High Court in **Gurmeet Singh Vs. State of Himachal Pradesh, 2019(4) ILR (H.P.) 902**. Learned counsel contends that entire mixture cannot be taken as contraband irrespective of the actual content of the contraband. It is further urged that the petitioner cannot be kept under detention merely because Section 37 of NDPS Act bars the grant of bail in case of recovery of contraband of commercial quantity. Besides, no independent witness was joined at the time of alleged recovery .

Learned State Counsel has strongly opposed the petition by submitting that contraband of commercial category has been recovered from the petitioner; and that trial is yet to begin. Learned State Counsel has referred to **State of Kerala etc. Vs. Rajesh etc, - Criminal Appeal No.154-157/2020** decided by Hon'ble Supreme Court of India on 24.01.2020 reported as Law Finder Doc Id #1670706, wherein it was held that exercise of power to grant bail in such like offences is not only subject to limitations contained under Section 439 Cr.P.C but is also subject to limitations placed by Section 37 of the NDPS Act. No person can be enlarged on bail for the offence under the Act unless twin conditions are satisfied; firstly, prosecution must be given opportunity to oppose the application and secondly, the Court must be satisfied that there are reasonable grounds for

believing that he is not guilty of such offence. If either of these conditions are not satisfied, ban for granting bail operates. Hon'ble Supreme Court held further that the expression "reasonable grounds" mean something more than prima-facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that accused is not guilty of the alleged offence. The underlying object of Section 37 of the NDPS Act in addition to the limitations provided under Cr.P.C cannot be ignored.

Learned State Counsel has further referred to **Hira Singh and another Vs. Union of India and another, 2020(2) RCR (Criminal) 523,** wherein it has been held by Hon'ble Supreme Court that in case of seizure of mixture of narcotic drugs or psychotropic substances with one or more neutral substances, the quantity of neutral substances is not to be excluded while determining small or commercial quantity of narcotic drugs or psychotropic substances.

The petitioner was found in possession of 18000 tablets of IP Lomotil containing the salt of Diphenoxylate Hydrochloride and Atrophine Sulphate. Since each tablet weighed 64 mg, it means total weight is 11520 gm which is of commercial category. The weight of the neutral substance cannot be excluded while determining small or the commercial quantity. For the sake of arguments, even if the neutral substance is not taken into consideration, the weight of Atrophine Sulphate, itself works out to 432 grams which again is of commercial category. Petitioner could not

produce any licence or permit to possess the contraband. Trial is yet to begin.

Having regard to the facts and circumstances as noticed above, there is nothing to show existence of any reasonable ground so as to believe that petitioner is not guilty of the offence. Thus one of the conditions of Section 37 of the Act is not fulfilled.

In view of the aforesaid discussion, present petition is hereby dismissed.

January 23, 2023	(DEEPAK GUPTA)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No