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

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CRM-M-11744-2022

Date of decision : 01.08.2023

Sarbjeeet Singh @ Sabu**..... Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. H.S. Batth, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Prayer is for grant of regular bail in FIR No.135 dated 14.11.2021, registered for offences punishable under Sections 22, 61 and 85 of the NDPS Act, at Police Station Sadar Rupnagar, District Rupnagar.

2. Petitioner is in custody since 14.11.2021 and has undergone actual custody of more than 01 year, 08 months and 14 days.

3. As per the allegations levelled in the FIR, it has been alleged as under:-

“Copy Ruqa to SHO PS Rupnagar, Jai Hind, Today I ASI alongwith C2 Shub Karan 690/RC, Gurjeet Singh 913 R were present in government vehicle number PB 65 AW-5131 being driven by PHG Permanand No. 31082/343 in connection with checking of suspect at IIT new camp city Rupnagar in the area of village Bada Phool near its boudary wall, it was about 5:20 PM, then one young person came from the IT main gate and who was carrying

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in his left hand one polythene pack and on seeing the police party, he suddenly turns towards left side of river. Then I ASI on suspecting with the help of raiding party, when tried to apprehend him, then the young man put the polythene pack which was in his left hand on the road side. Then he was apprehended and on asking he told his name Sarbjeet Singh @ Subu son of Bhajjan Singh resident of in front of IIT new camp Bade Phool PS Sadar Rupnagar. That the polythene bag lying in the grass contains narcotics injection. Se Sarbjeet @ Sabu abovenamed by keeping intoxicating injections committed offence of 22-61-85 NDPS Act. So the Ruqa is being sent through constable Gurjeet Singh 913/R for registration of FIR to the police station against Sarbjeet Singh @ Sabu abovenamed. After registration of the FIR its number may be intimated. The case being of NDPS Act Satnam Singh inspector CIA Rupnagar being investigating officer to come at the spot through mobile phone, who said that I Jaspal Singh 1139/ R alongwith ASI Sher Chand 774/ R and ASI Sukhdev Singh 889/ R are reaching the spot. Special reports through I/C control room through wireless was also told to be sent. I ASI alongwith other raiding officials also alongwith apprehended Sarbjit Singh @ Sabu is present at the spot. Sd/- Balbir Singh ASI CIA, Rupnagar 14.11.2021 in the area of IIT new camp Bada Phool at 6:40 PM.”

4. Counsel for the petitioner submits that as per the case projected by the prosecution recovery effected from the petitioner is of 12 injections of Buprenorphine 2 ml. each which makes it 24 ml. As per the notification issued by Central Government under NDPS Act, the

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commercial quantity for Buprenorphine is 20 grams. The quantity recovered has been wrongly assessed by the lower Court as 24 grams to deal it as a commercial quantity and to hold that the rigors of Section 37 of the NDPS Act will be attracted. He further submits that in fact conversion of ml into grams is dependent upon density, thus, in the absence of prosecution spelling out the details from the label of the injection, it cannot be ascertained as to whether the quantity is commercial. Apart therefrom counsel relies upon judgment rendered by Kerala High Court tilted as ***Salam vs. Union of India 2007(16) RCR (Criminal) 909***, whereas relying upon the affidavit filed by Union of India itself, it was held as under:-

“2. A detailed counter affidavit has been filed on behalf of the first respondent and in paragraph 5 thereof it is stated as follows:

It is specifically submitted that “Buprenorphine” injection or “Buprenorphine” Hydrochloride injection is a sterile solution of Buprenorphine Hydrochloride in water for injection and the standards for the same are given in the Indian Pharmacopoeia, 1996. As per Indian Pharmacopoeia, 1996 small quantity and commercial quantity of Buprenorphine is fixed as follows:

It is respectfully submitted that as per the Indian Pharmacopoeia standards one gram of Buprenorphine is 3333.33 millilitres when it is in liquid form for the purpose of small quantity. For the purpose of commercial quantity 20 grams of Buprenorphine is 66666.60 millilitres when it is in liquid form.

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Small Quantity of Buprenorphine		Commercial Quantity of Buprenorphine	
As per Notification S.O.527(E) dated 16.17.1996 of M/O. finance, D/O. revenue	Equivalent quantity in Milliliters in its present available liquid form as per IP, 1996 standards	As per Notification S.O.527(E) dated 16.7.1996 of M/O finance, D/O.Revenue	Equivalent quantity in Milliliters in its present available liquid form as per IP, 1996 standards

3. Even though Sri. M.V.Mathai Muthirenthi, learned counsel for the petitioner addressed me at length with reference to the averments in the writ petition and the grounds raised therein and the learned counsel drew my attention to the apparent conflict between the judgment of the Supreme Court and that of the Division Bench of this Court in view of the stand taken by the first respondent through the counter affidavit before this Court and the submissions of the learned Assistant Solicitor General Sri. Parameswaran Nair at the bar, it is not necessary that the issue is discussed and gone into by this Court elaborately. It is not in dispute that it is necessary that small quantity and commercial quantity of buprenorphine tidegisic is fixed in milliliters considering the liquid form of the substance. The Government have relied on Indian Pharmacopoeia 1996 and taken the stand that 1 gram of buprenorphine corresponds to 3333.33 milliliters and 20 grams corresponds to 66666.60 milliliters. Ultimately Mr.Mathai Muthirenthi also submitted that it will suffice, if the above stand of the first respondent taken on the basis of Indian Pharmacopoeia 1996 be given the fiat of the court.

Under the above circumstances, the writ petition will stand disposed of declaring that 1 gram of buprenorphine is equivalent to 3333.33 milli

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liters when it is a liquid form for the purpose of small quantity and declaring further that for the purpose of commercial quantity of 20 grams of buprenorphine is equivalent to 66666.60.”

5. In light of the aforesaid, counsel for the petitioner submits that the quantity recovered from the petitioner cannot be treated as commercial and thus rigors of Section 37 of the Act will not be attracted.
6. Counsel representing State is not in a position to dispute the aforesaid factual assertions.
7. It is admitted position that the investigation already stands concluded and the trial has advanced, out of 12 witnesses, 08 stands examined and there is no antecedents of the petitioner having been involved in case under NDPS Act.
8. In view thereof, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.
9. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

01.08.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No