



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRM-M-21818-2024
DATE OF DECISION: 03.07.2024**

...PETITIONER

UNION TERRITORY CHANDIGARH ... RESPONDENT

Present: Mr. Sunil Sheoran, Advocate for the petitioner(s).
Mr. Manish Bansal, PP, UT Chandigarh with
Ms. Diksha Sharma, Advocate with IO Hira Singh.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 82, dated 13.12.2023, under Section 21 (Section 22 added later on) of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sector-49, District Chandigarh.

2. Learned counsel for the petitioner contends that the alleged recovery made was 53.04 Grams of Heroin was non-commercial in nature. He further refers to the FSL report dated 1.2.2024 which shows that there are six salts present in the contraband but percentage of the same has not been reflected in it. He also points out to the finding recorded by the Trial Court to the effect that 53.04 grams will have to be treated as commercial quantity since the salt Racemethorphan would be commercial over and above 50 grams

asserting that in the FSL report there is no reference to the percentage



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of the salts which are six in number and as such the total quantity cannot be ascertained with specific measurement and hence, the same cannot be held against the present accused to say that it is commercial in nature.

3. Learned counsel for UT Chandigarh has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 6 months and 21 days who is not involved in any other case. He has relied upon the judgment of the Division Bench of this Court passed in '*Anup Gupta vs. State of Punjab*' decided on 07.05.2008 reported as '*2008(4) RCR (Criminal) 390*' to say that six salts are found to be present in the FSL report from the sample of contraband collectively if taken together crosses mark of the commercial quantity, the same will be considered to be commercial in nature, therefore, in the present case the petitioner does not deserve the concession of bail.

4. Be that as it may, having perused the FSL Report with the assistance of the learned State Counsel wherein the detected substances to be six in number are mentioned below :-

- i. Diacetylmorphine (Heroin) (Sr. No. 56)
- ii. 6-Monoacetylmorphine (" Sr. No. 93)
- iii. 3-Monoacetylmorphine (* Sr. No.93)
- iv. Acetylcodein (Sr. No.93),
- v. Racemethorphan ("Sr. No. 115)
- vi. Tramadol (* Sr. No. 238ZH)

5. But the percentage/quantity has not been ascertained as per the ratio of the sample collected and examined by the FSL in its



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report and therefore, by mere mentioning that there are 6 salts involved, the same are commercial in nature having crossed the mark of 50 grams is not correct.

6. Even other wise in the instant case, investigation is complete, charges framed on 30.03.2024, out of total 15 prosecution witnesses, none has been examined so far, meaning thereby trial will take long time and in such a case where the quantity even if taken to be 53.04 grams, is marginally over and above the commercial quantity though the same is also not a conclusive measurement in the light of the FSL report being silent on the percentage of salts involved.

7. Having heard learned counsel for the respective parties, this Court is of the considered view that as per the principle of the criminal jurisprudence, no one should be considered as guilty till the guilt is proved beyond reasonable doubt and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of Apex Court in “***Dataram Singh vs. State of Uttar Pradesh and another;*** (2018) 3 SCC 22”.

8. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.



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9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

10. Petition is allowed in above terms.

(SANDEEP MOUDGIL)
JUDGE

03.07.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>