

‘Puran Singh Versus State’
FIR No.56/2019 of P.S.Sarhali.
Under Section 22 of NDPS Act, 1985.

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Present:      Shri H.K.Handa, Advocate for the accused-applicant.  
                 Ms.Ramneet Kaur, APP for the State.

This order of mine shall dispose of an application filed by accused Puran Singh whereby he has come up with a prayer for his release from custody on regular bail under Section 439 Cr.P.C. in the above captioned case FIR No.56/2019 of P.S.Sarhali.

On notice of the application, records have been produced before me and I have perused the same. Learned counsel for the accused-applicant and learned APP for the State have also been heard at length.

As per prosecution version, 1220 Number intoxicant tablets were recovered from the conscious possession of the accused when he was apprehended by the police of Sarhali on 24.4.2019. The report of chemical analysis in respect of the recovered tablets has since been received according to which the average weight of each tablet has been reported to be 135 mg. and the salt therein is reported to be Alprazolam. The total weight of 1220 number tablets thus works out to 164700 mg. or 164.7 Grams which falls within the meaning of commercial quantity as defined in NDPS Act, 1985. However, learned counsel for the accused-applicant has contended that the average quantity of Alprazolam in each tablet being only 0.38 mg, the total weight of Alprazolam actually falls within the ambit of non commercial quantity. In support of his contentions, he has placed reliance upon a Judgment rendered by our own Hon’ble High Court in the case of ‘Rajvir Singh alias Raju Versus State of Punjab’ being CRM M No.35080 of 2018 decided on 21.8.2018 and another Judgment by Hon’ble Supreme Court in the case of ‘Bindhyachal Singh Versus The Narcotic Control Bureau’ being Criminal Appeal No.577 of 2011 decided on 30.11.2017 to contend that in both the said Judgments, the actual quantity of the psychotropic substance have been taken into consideration while ordering release of the accused on bail in the former case while in the later case also, the sentence modified by the Hon’ble High Court from commercial quantity to non commercial quantity has been upheld.

I have carefully gone through both the said Judgments to find that the Judgment rendered by our own Hon'ble High Court in the case of Rajvir Singh (supra) has been rendered by Hon'ble Single bench whereas in a Division Bench Judgment rendered in the case of '**Inderjit Singh @ Laddy vs State of Punjab 2014 (3)-RCR (Criminal)-952**', it has been held by the Hon'ble Division Bench that the total weight of the recovered substance including its neutrals substances, has to be taken into consideration to conclude as to whether the recovered quantity is small quantity, non-commercial quantity or commercial one. Thus, keeping in view the said Judgment by a larger bench of our own Hon'ble High Court, the recovered quantity of the tablets necessarily held to be weighed as 164.7 Grams falling within the commercial quantity.

As regards the Judgment in the case of Bindhyachal Singh rendered by the Hon'ble Supreme Court is concerned, it is worth while to note that the said Judgment pertains to a case in which the recovery of contraband was effected somewhere in the year 2005 as is clear from the concluding paragraph of the said Judgment that as by 28.2.2011, the convict had already served the sentence of over six years. However, after the amendment in NDPS Act, 1985 in the year 2009 whereby a clause No.4 has been inserted underneath the schedule by virtue whereof it has been specified that it is the entire weight of the contraband including the neutral substances thereof which is to be taken into count for the purpose of arriving at the exact quantity of the contraband, the position has undergone a sea change as a result of which the accused-applicant cannot be extended the benefit of the Judgment in the case of Bindhyachal Singh Versus The NCB which happened to be passed in respect of recovery effected much before the amendment of 2009 adding clause No.4 underneath the schedule to NDPS Act, 1985.

Thus, considering the fact that the recovery of contraband effected in this case falls within the ambit of 'Commercial quantity' I am of the considered view that in view of the bar created by Section 37 of the Act, the accused is not entitled to the concession of bail and in consequence, his bail application stands dismissed. Papers be tagged with pending challan file.

Pronounced:  
19.10.2019.

(Charanjeet Arora)  
Addl.Sessions Judge, Tarn Taran.