

CRM-M-41429-2017(O&M)

Date of decision:08.11.2017

Jatinderpal Singh @ J.P.

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S.Kathuria, Advocate, for the petitioner.

Mr. A.S.Gill, Sr. DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

The instant petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case FIR No.55, dated 12.07.2017, under Section 22 of NDPS Act, registered at Police Station Mukandpur, District SBS Nagar.

Learned counsel for the petitioner submits that the petitioner is in judicial lock up since 13.07.2017 and is HIV-1 positive case and has relied upon the report of Central Jail, Ludhiana (Annexure P-1), dated 11.10.2017. It is further submitted that the petitioner is not involved in any other such or similar case/ FIR. He further submits that as per proviso to Rule 66 of the NDPS Rules, 1985 an individual can possess 100 doses of Buprenorphine Hydrochloride and has relied upon the order dated 30.08.2017, passed in CRM-M-20997 of 2017, the operative part of this order is reproduced as under:-

“ Learned counsel for the petitioner submits that petitioner is in custody since 7.3.2017. Earlier also, the petitioner remained in custody from 4.8.2016 to 22.11.2016. Thus, the petitioner is in custody for more than nine months. She has further argued that the allegation against the petitioner is that he was found in possession of 35 vials of

Buprenorphine Hydrochloride and in view of proviso attached to Rule 66 of the NDPS Rules, 1985 an individual can possess 100 doses of the same for his personal medical use. She has also relied upon Saleem Mohd. Versus State of Punjab 2015 (25) R.C.R., (Criminal) 816 and Ajaib Singh versus State of Punjab 2012 (2) R.C.R. (Criminal) 330 to contend that Buprenorphine does not fall under the definition of psychotropic substance.

On the other hand, learned State counsel has argued that the total quantity of 35 Buprenorphine vials, which contained 2 ML each, comes to 70 gm. Therefore, falls in commercial quantity as the quantity below 20 grams comes under non-commercial quantity.

I have heard learned counsel for the parties.

Having considered the case of Saleem Mohd.'s case (supra) and noticing the fact that the petitioner is in custody for more than nine months and no other case has been pointed out against him and the trial is at initial stage and it will take time, I deem it appropriate to release him on regular bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of the trial Court.

However, it is made clear that the observations made hereinabove shall not be construed as any expression on the merits of the case. ”

On the other hand, learned State counsel, on instructions from ASI Surinder Singh, has not disputed about the Jail doctor certificate (Annexure P-1), however, submits that the recovery is of commercial quantity. As per custody certificate issued by the Superintendent Central Jail, Ludhiana, the petitioner has undergone 3 months and 25 days of actual

sentence and is not involved in any other case.

In view of the submissions made above, considering the fact that the petitioner is a HIV-I positive case and in view of the order dated 30.08.2017, passed in CRM-M-20997 of 2017 and also in view of the fact that the petitioner is not involved in any other case, the petitioner is directed to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate.

(ARVIND SINGH SANGWAN)
JUDGE

08.11.2017

Hemlata

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No