Sr. No.223

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM No. M-13472 of 2018 (O&M)
Date of Decision: 05.04.2018

Rajit

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Ms. Arti Kaur, Advocate,
for the petitioner.

Mr. S.S.Sandhu, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.(ORAL)

Petitioner seeks regular bail pending trial in case FIR No.21 dated 09.02.2018, under Sections 21/22 of NDPS Act, registered at Police station City Nawanshaher, District S.B.S.Nagar.

As per prosecution version, the alleged recovery effected from the petitioner is of 10 injections of Buprenorphine Hydrochloride of 2 ml. each.

During the course of arguments, counsel has adverted to an order dated 06.10.2017 passed by a Coordinate Bench of this Court in CRM No.M-30008 of 2017 wherein benefit of bail was granted to the petitioner therein, namely, Sonu and against whom the alleged recovery was of 24 injections of Rexogesic containing 2 ml. each and containing the salt of Buprenorphine Hydrochloride.

The order dated 06.10.2017 in CRM No.M-30008 of 2017

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reads as follows:

> ***"This petition has been filed under Section 439 Cr.PC for grant of regular bail in case FIR No.86 dated 24.04.2017, registered under Sections 22, 61, 85 NDPS Act, 1985 at Police Station Basti Bawa Khel, District Jalandhar.***
>
> ***According to the case spelled out in the FIR, the petitioner was apprehended while carrying one green colour bag in his right hand. The search revealed that the bag contained 24 injections of "Avillomc" and 24 injections of "Rexogesic" containing 2 ml each. The injections were seized and the petitioner was taken into custody on 24.04.2017. Since then, the petitioner has been in jail.***
>
> ***Learned counsel for the petitioner submits that according to the report of the FSL "Avillomc" is a non-psychotropic substance whereas "Rexogesic" contains the salt "Buprenorphine Hydrochloride" and each injection contains 0.324 mg of the said substance and in totality 24 injections contain 15.55 mg of the alleged contraband. Thus, according to the learned counsel for the petitioner, the quantity recovered from the petitioner is less than the commercial quantity.***
>
> ***Learned counsel for the State, on the other hand, submits that according to the FSL report, 0.25 mg of psychotropic substance is contained in every ml of the sample. Taking the same into consideration, the total content of the psychotropic substance in 24 injections of 2 ml each works out to be 12 mg. Apart from that learned State counsel relies***

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upon Note (iv) inserted vide amendment dated 18.11.2009 in Notification dated 19.10.2001 appended with the NDPS Act, 1985 to submit that the quantity mentioned as non-commercial/commercial in the said Notification is to be taken with reference to the entire quantity of the contraband, recovered and not on the basis of the pure drug content.

Learned counsel for the petitioner relies upon the first proviso to Rule 66(ii) of NDPS Rules, 1985, to submit that a person is lawfully authorised to possess 100 doses unit at a time. He relies upon a judgment of Division Bench in Saleem Mohd. vs. State of Punjab, 2015(5) Law Herald 3939.

Having heard learned counsel for the parties, I am of the view that whether the possession of the alleged psychotropic substance falls within commercial quantity or not, is to be decided at the time of trial. The first proviso to Rule 66 (ii) of NDPS Rule, 1985, favours the petitioner provided he is able to show at the time of trial that the possession of the substance, was for medicinal use. Further, "Avillomc" has been proven to be a non-psychotropic substance. Keeping in view the totality of the facts and circumstances and the fact that the petitioner has been in custody since 24.04.2017, I deem it just and expedient to release the petitioner on bail subject to his furnishing bail/surety bonds to the satisfaction of learned CJM/Judge, Special Court under the NDPS Act, 1985, District Jalandhar.

Petition stands disposed of accordingly."

State counsel concedes that petitioner is not involved in

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any other case under the NDPS Act.

Petitioner is held entitled to the benefit of bail in terms of the reasoning contained in order dated 06.10.2017 passed by the Coordinate Bench in CRM No.M-30008 of 2017.

Petition is allowed.

Petitioner be enlarged on bail subject to satisfaction of the trial Court/Duty Magistrate concerned.

Disposed of.

05.04.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No

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