

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

CRM-M No.13958 of 2018 (O&M)
Date of Decision: 25.09.2018

Happy

....Petitioner

Versus

U.T of Chandigarh

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.P.S. Chakkal, Advocate
for the petitioner.

Mr. Parveen Chauhan, Advocate
for Mr. G.S. Wasu, APP U.T. Chandigarh.

DAYA CHAUDHARY, J. (ORAL)

Crl. Misc. No.34060 of 2018

This application has been moved for placing on record the report of Chemical Examiner and Custody Certificate of the petitioner.

Criminal Misc. Application is allowed. Report of Chemical Examiner and Custody Certificate of the petitioner are taken on record.

CRM-M No.13958 of 2018

Petitioner-Happy has approached this Court by way of filing the present petition under Section 439 Cr.P.C for grant of regular bail to him in case FIR No.244 dated 20.12.2017 registered under Section 22 of the NDPS Act registered at Police Station Mauli Jagran, Chandigarh.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, no offence is made out

against him. He also submits that no recovery has been effected from him and the story is totally false and concocted one. The alleged recovery is marginally more than the commercial quantity which is 20 ml. and the recovered quantity is 22 ml. as per Chemical Examiner's Report. Learned counsel also submits that the challan has not been presented, trial will take long time to conclude and nothing is to be recovered from the petitioner. The petitioner is in judicial custody since 20.12.2017. All witnesses are the official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence. At the end, learned counsel for the petitioner submits that no other case under the NDPS Act is pending against the petitioner.

Learned State counsel has not disputed the custody period as well as stage of trial but has opposed the submissions made by learned counsel for the petitioner on the ground of seriousness of offence.

Heard the arguments of learned counsel for the parties and have also gone through the contents of the FIR as well as other documents available on the file.

The recovery effected from the petitioner is 11 injections of *Buprenorphine* 2 ml. each and 11 injections of *Pheniramine Maleate* 10 ml. each which comes to 22 ml. as per Chemical Examiner's Report and is marginally more than the commercial quantity i.e 20 ml. The petitioner is in custody since 20.12.2017 and no other case under the NDPS Act is pending against the petitioner.

In view of the conflicting opinion given in ***Kismat Singh vs State of Punjab 2012(2) RCR (Criminal) 329*** and ***Ajaib Singh vs State of Punjab 2012(2) RCR (Criminal) 330***, wherein, it was held that

Buprenorphine falls under Drugs and Cosmetics Act and the salt has not been included in the Schedule I of the NDPS Rules, whereas, as per judgment in case ***Dilip Kumar Virvani and others vs State of Chattisgarh 2014(35) RCR (Criminal) 329***, Buprenorphine Hydrochloride is a psychotropic substance within the meaning of Section 2(xxiii) of the Act. Same issue was there in judgments of this Court in cases ***Amandeep vs State of Punjab (CRM-M No.250 of 2018 decided on 12.01.2018)***, ***Sonu vs State of Punjab (CRM-M No.30008 of 2017 decided on 06.10.2017)*** as well as ***Sulakhan Singh @ Billa vs State of Punjab (CRM-M No.1010 of 2018 decided on 24.01.2018)***.

Accordingly, by considering the period of custody and the recovery, which is marginally more than the commercial quantity and also the fact that no other case under the NDPS Act is pending against the petitioner; all witnesses are the official witnesses; there is no possibility that the petitioner may influence the witnesses or tamper with the record and also the fact that trial may take long time to conclude; no useful purpose would be served by keeping the petitioner behind bars, the present petition is allowed and petitioner, namely, Happy is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

(DAYA CHAUDHARY)
JUDGE

25.09.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No