

**Sr. No.223
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM No. M-16079 of 2018 (O&M)

Date of Decision: 27.04.2018

Bharat

... 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 benefit of regular bail pending trial in case FIR No.26 dated 14.04.2017, under Section 22 of NDPS Act, registered at Police Station Mukandpur, District SBS Nagar.

Counsel for the parties have been heard.

As per prosecution version, an alleged recovery of 10 bottles of Avil injections (10ml. each) and 16 vials of Buprenorphine containing 2 ml. each had been recovered from the co-accused Santosh Kumari @ Toshi and who was pillion rider on a motorcycle. Present petitioner is stated to be the driver of the motorcycle.

Petitioner was arrested on 14.04.2017.

Pleadings on record would indicate that petitioner was initially granted interim bail but subsequently such concession was cancelled on 04.09.2017.

Petitioner is in custody since such point of time.

Co-accused Santosh Kumari @ Toshi has been granted benefit of bail vide order dated 20.03.2018 in CRM No.M-10897 of 2018 and such order reads in the following terms:-

“Petitioner seeks the benefit of regular bail in case F.I.R. No.26 dated 14.4.2017 under section 22 of N.D.P.S Act, registered at Police Station, Mukandpur, District S.B.S. Nagar.

Learned counsel for the parties have been heard.

As per prosecution version, the alleged recovery effected from the present petitioner was of 10 bottles of Avil injections of 10 ml each and 16 vials of Buprenorphone containing 2 ml each.

Petitioner was arrested on 14.4.2017. Petitioner thereafter was granted concession of interim bail to await the report of the Chemical Examiner. Thereafter petitioner was even granted benefit of regular bail by the Trial Court. However, in pursuance to an application moved on behalf of the prosecution claiming that the alleged recovery was commercial in nature, petitioner was again arrested on 4.9.2017.

Petitioner is not stated to have misused the concession of interim bail/regular bail previously granted to her.

Trial is at the very initial stage and would take time to conclude.

During the course of arguments, counsel has adverted to an order dated 06.10.2017, passed by a Co-ordinate Bench of this Court in CRM-M-30008 of 2017, wherein the benefit of bail was granted to the

petitioner, therein, namely Sonu and against whom, there was an alleged recovery of 24 injections of Rexogesic containing 2 ml. each and containing the salt of Bupranorphine Hydrochloride.

The order dated 06.10.2017 in CRM-M-30008 of 2017 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 nonpsychotropic 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 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 noncommercial/ 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."

Learned State counsel concedes that the petitioner is not involved in any other case under the NDPS Act.

Petitioner is held entitled to the benefit of bail in terms of the reasoning adopted in order dated 06.10.2017, passed by the Co-ordinate Bench in CRM-M-30008 of 2017.

Petition is allowed.

Without making any observations on merits, petitioner is held entitled to the benefit of bail.

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

Disposed of."

Petitioner is not stated to be involved in any other case under the NDPS Act.

In the considered view of this Court, the reasoning adopted by this Court in the order dated 20.03.2018 while granting

benefit of bail to co-accused Santosh Kumari would avail to the present petitioner as well.

Accordingly, prayer made in the present petition is accepted.

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

Disposed of.

27.04.2018

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	No