

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25787-2017 (O&M)

Date of decision: 25.01.2018

Hitesh Kumar @ Ashu

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Himanshu Puri, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

CRM-1802-2018

Prayer in this application is for placing on record the judgment dated 01.04.2016 passed by the Judge, Special Court, Kapurthala as Annexure P-3.

For the reasons stated in the application, same is allowed.
Annexure P-3 is taken on record.

CRM stands disposed of.

CRM-M-25787-2017

Prayer in this petition is for grant of regular bail to the petitioner in FIR No.30 dated 24.03.2017 under Sections 22/61/85 of NDPS Act, registered at Police Station Sadar Phagwara, District Kapurthala.

Learned counsel for the petitioner submits that the petitioner is in

judicial custody since 24.03.2017. Counsel for the petitioner further submits that challan has been presented, however, prosecution evidence has not yet started. Counsel for the petitioner also submits that as per the custody certificate, the petitioner is involved in two more FIRs and he stands acquitted in FIR No.29 dated 26.05.2014 and in another FIR No.17 dated 17.03.2015, he is on bail. Counsel for the petitioner has further submitted that recovery from the petitioner is 12 injections of Buprenorphine. It is further submitted that as per proviso to Rule 66 of NDPS Rules, 1985, an individual can possess 100 doses of Buprenorphine Hydrochloride and has relied upon the order dated 30.08.2018 passed in CRM-M-20997-2017. 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.”

Learned State counsel, on instructions from HC Rakesh Kumar, has not disputed the fact that prosecution evidence in the case is yet to start.

Without commenting anything on merits of the case, considering the fact that the petitioner is in judicial lockup since 24.03.2017; he has been acquitted in one case/FIR and in another case/FIR, he is on bail; prosecution evidence is yet to start and also in view of the fact that conclusion of the trial will take long time, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

25.01.2018
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No