

Crl. Misc. No. M-32128 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-32128 of 2018

DATE OF DECISION:13.08.2018

Sukhjinder Singh

.....Petitioner

Versus

U.T., Chandigarh

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Tanu Bedi, Advocate
for the petitioner.

Mr. Yashwant Singh Rathore, Public
Prosecutor and Mr. Rajiv Shama, Advocate
for U.T., Chandigarh.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 439 Cr.P.C. by petitioner-Sukhjinder Singh for grant of regular bail in case FIR No. 37 dated 4.2.2017 registered under Section 22 of the NDPS Act at Police Station South Sector 34, Chandigarh.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case, whereas, he was not involved in any manner. The petitioner is in custody since the date of registration of FIR i.e. 4.2.2017 and undergone more than one year and six months. Learned counsel further contends that there are total 18 prosecution witnesses and not even a single witness has been examined so far. As per allegations in the FIR, the petitioner has been found in possession of 50 injections of

Buprenorphine of 2 ml each, which comes to 100 mls. Learned counsel also submits that under the similar circumstances one Mahesh Negi approached this Court by way of filing Crl. Misc. No. M-42417 of 2017 for grant of regular bail, which was allowed vide order dated 23.3.2018 by relying upon an order passed by this Court in Crl. Misc. No. M-30008 of 2017 on 6.10.2017. At the end, learned counsel for the petitioner contends that the petitioner is entitled for benefit of bail in terms of reasoning given in order dated 6.10.2017 passed by Coordinate Bench of this Court in Crl. Misc. No. M-30008 of 2017.

Learned counsel for respondent-State has not disputed the custody period and stage of the trial.

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

Admittedly, the petitioner is in custody since the date of registration of FIR i.e. 4.2.2017 and out of total 18 prosecution witnesses, not even a single witness has been examined so far. In Crl. Misc. No. M-30008 of 2017, the accused-petitioner was found in possession of 24 injections of “Avillomc” and 24 injections of “Rexogesic” containing 2 ml each and was granted benefit of bail vide order dated 6.10.2017.

Order dated 6.10.2017 passed in Crl. Misc. No. 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.”

In view of order dated 6.10.2017 passed in Crl. Misc. No. M-30008 of 2017 and also by considering the facts that the petitioner is in custody for the last more than one year and six months; out of total 18 prosecution witnesses, not even a single witness has been examined so far and there is no other case pending against the petitioner under NDPS Act, the present petition is allowed. Petitioner-Sukhjinder Singh is directed to be

Crl. Misc. No. M-32128 of 2018(5)

released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

August 13, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No