

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39971-2017 (O&M)
Date of decision: 11.05.2018

Davinder Pal

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Dinesh Nagar, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.48 dated 05.06.2017 under Sections 22/21 of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), registered at Police Station Behram, District SBS Nagar.

Learned counsel for the petitioner submits that the petitioner is neither a previous convict nor he is involved in any other case under the NDPS Act. It is further submitted that the alleged recovery from the petitioner is of 13 vials of Buprenorphine Injections containing 2 ml each, total 26 ml and the petitioner is in judicial lockup since 06.07.2017 and till date, no prosecution evidence has been recorded.

Learned counsel for the petitioner further submits that while giving an offer of search under Section 50 of NDPS Act, the Investigating Officer has not informed the petitioner that he has a legal right to be searched before the

Magistrate or a Gazetted Officer and consent of the petitioner was recorded that he has faith on the Investigating Officer/SI Amrik Singh, is not a valid compliance of Section 50 of NDPS Act as well as no independent witness was joined at the time of conducting the search.

Learned counsel for the petitioner has relied upon an order dated 14.02.2017 passed in CRM-M-1752-2017 to submit that as per FSL report, ingredients present in the sample contain Buprenorphine Hydrochloride Pheniramine Maleate, 0.26 mg/ml in parcel 1 and 22.71 mg/ml in parcel 2 and the recovery is slightly higher than the commercial quantity. Counsel for the petitioner has further relied upon **Kulwant Singh @ Happy Vs. State of Punjab, 2016 (1) Law Herald (P&H) 52** to submit that in similar circumstances, where the alleged recovery was of 24 grams and being slightly higher the commercial quantity, this Court has granted bail to the said person.

Learned counsel for the petitioner has also relied upon a judgment of the Hon'ble Supreme Court in **Arif Khan @ Agha Khan Vs. State of Uttarakhand, 2018 SCC Online SC 459** to submit that the mandatory compliance of Section 50 of NDPS Act was not done in accordance with the procedure prescribed under Section 50 of the NDPS Act.

Learned State counsel, on the basis of custody certificate dated 19.01.2018, has not disputed the fact that the petitioner is neither a previous convict nor is facing any trial in any other case. Learned State counsel, on instructions from ASI Amarjit Singh, has submitted that the case is now fixed for prosecution evidence and till date, no prosecution witness has been recorded.

Without commenting on merits of the case, considering the fact that petitioner is in judicial custody for the last about 11 months; he is not

involved in any other case; he is not a previous convict; recovery from the petitioner is slightly higher than the commercial quantity; prosecution is yet to start and also in view of the fact that petitioner is a young person aged about 22 years and there is a possibility that he may improve himself; there are debatable points as there is non-compliance of provisions of Section 50 of NDPS Act, I am of the opinion that petitioner is entitled for concession of regular bail pending trial in view of Section 37 of NDPS Act.

In view of the above, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bond to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

11.05.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No