

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M No. 49231 of 2018

Date of decision : 07.12.2018

Gurjeet Singh @ Jeeta

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. G. S. Salana, Advocate for the petitioner.

Mr. Amit Mehta, Senior DAG, Punjab.

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DAYA CHAUDHARY, J.

Petitioner Gurjeet Singh alias Jeeta has approached this Court by way of filing the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.60 dated 01.11.2017 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station – Sadar Rajpura, Distt. Patiala, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas he was not involved. He was not found to be in possession of any alleged injections. He was picked up by the police and thereafter, he was implicated in the case. Learned counsel further submits that as per case of the prosecution, the petitioner has been shown to be apprehended by the police while travelling in a Haryana

Roadways bus on G.T. Road, but neither the registration number of the bus has been mentioned in the FIR nor any independent witness from the passengers who were travelling in the bus or the driver/conductor of the bus were joined at the time of the alleged recovery. Learned counsel also submits that the version of the prosecution cannot be believed that the petitioner and co-accused Balraj Singh alias Raja got down from the bus in order to escape from the police. By concocting a false story, he has been implicated. Learned counsel also submits that one Lakhwinder Singh was joined at the time of seizure proceedings but he is not an independent witness rather he is a stock witness of the police and close to ASI Swarn Singh. Learned counsel also submits that co-accused of the petitioner namely Balraj alias Raja has been released on regular bail vide order dated 05.09.2018 passed in CRM-M No.22815 of 2018. The case of the petitioner is on better footing viz-a-viz said co-accused. Petitioner is in custody since 01.11.2017. All the prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them or tamper with the evidence.

Learned State counsel has not disputed the period of custody undergone by the petitioner as well as factum of release of co-accused on regular bail but he has opposed the submissions made by learned counsel for the petitioner on the ground of seriousness of offence and the recovery being commercial.

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

As per the allegations in the FIR, the total recovery from both the accused is 90 injections of Buprenorphine containing 2 ml each, which comes to 180 ml in total. As per proviso to Rule 66 of NDPS Act an individual can possess 100 doses of Buprenorphine Hydrochloride. The controversy with regard to Buprenorphine at Serial No. 169 of the notification/Schedule of the NDPS Act, would be debatable as to whether it is a psychotropic substance or not.

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 Chattishgarh, 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, keeping in view the ratio of law laid down in the judgments passed by the Coordinate Benches in the above said cases, without commenting anything on the merits of the case and also on the basis of parity as co-accused Balraj Singh alias Raja has been released on regular

bail, the present petition is allowed and the petitioner is directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

07.12.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No