

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4794-2019

Date of Decision : May 24, 2019

Charanjit alias Babbu

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr.B.K.Mehta, Advocate,
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab,
for respondent-State.

Mr. Anuj Balian, Advocate,
for the complainant.

SHEKHER DHAWAN, J.

Present petition under Section 439 of the Code of Criminal Procedure is for grant of regular bail in case bearing FIR No. 31 dated 4.7.2018 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act") registered at Police Station-Pojewal, District Shaheed Bhagat Singh Nagar (Annexure P/1).

2. Learned counsel representing the petitioner contended that the petitioner has been falsely implicated in this case for the alleged recovery of 12 injections of Rexdgesic Buprenorphine each containing 2 ml., which is below the commercial quantity. The petitioner is not involved in any other case under the Act and decision of the case still to take some more time.

...

So, he be released on bail. More so, in similar matters, this Court had passed orders for release of accused-persons. In this behalf, learned counsel for the petitioner has placed reliance on the Division Bench judgment of this Court in CRM-M-5207 of 2014, **Saleem Mohd Vs. State of Punjab**, decided on 4.11.2015.

3. Learned State counsel as also learned counsel representing the complainant opposed the bail application on the ground that recovery effected from the possession of the petitioner is of “commercial quantity” and there is no material or evidence available on the file that the petitioner was having possession of the same for personal consumption and the present petition deserves to be dismissed. He however, fairly conceded that the petitioner is not involved in any other similar case.

4. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that as per view taken by Co-ordinate Bench of this Court in CRM-M-30008-2017, **Sonu Vs. State of Punjab**, where benefit of bail was granted to the petitioner (therein) against whom alleged recovery of 24 injections of “Rexogesic” containing 2 ml each containing the salt of Buprenorphine Hydrochloride was granted bail and this Court observed as under :-

“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 2 of 4 dated 19.10.2001 appended with the NDPS Act, 1985 to submit that the quantity mentioned as non-commercial/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.”

5. In view of the above, the petitioner is held entitled to the benefit of bail in terms of reasoning contained in order dated 6.10.2017 passed by the Co-ordinate Bench of this Court in CRM-M-30008-2017.

6. Resultantly, the present petition stands allowed and petitioner, Charanjit alias Babbu is ordered to be released on regular bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court concerned/Duty Magistrate.

7. Any observation made herein above shall have no bearing on the merits of the case.

(SHEKHER DHAWAN)
JUDGE

May 24, 2019

som

Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes