

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-23104-2019
Date of decision: 23.09.2019**

Sahibjit Singh @ Raja

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 30 dated 24.03.2017, registered under Sections 22 of the NDPS Act, 1985 at Police Station Sadar Phagwara, District Kapurthala.

Learned counsel for the petitioner relies upon order dated 25.01.2018 passed in CRM-M-25787-2017, vide which co-accused Hitesh Kumar @ Ashu has been granted concession of regular bail by passing the following order:

“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.”

Learned counsel for the petitioner further submits that the petitioner is in judicial custody since 25.03.2017 and despite the fact that a period of more than 02 years and 06 months has passed, the case is still at the stage of recording the statement of prosecution witnesses. Learned counsel for the petitioner further submits that the petitioner is not involved in any other case.

Learned State counsel, on instructions from ASI Mangal and on the basis of the custody certificate dated 26.05.2019, has not disputed the

factual position and submitted that the case is still at the stage of recording the evidence of prosecution witnesses.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for more than 02 years and 06 months; co-accused has already been granted concession of regular bail by this Court as noticed above and also in view of the fact that the trial is likely to take some time, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

23.09.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No