

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

269

CRM-M-34170 of 2019 (O&M)

Date of decision: 27.08.2019

Harpreet Kaur @ Happy

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. B.K. Mehta, Advocate
for the petitioner.

Mr. S.P.S. Tinna, Addl. AG, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Prayer in the petition is to grant regular bail in FIR No.42 dated 18.04.2019 registered under Section 22 of the Narcotic Drgus and Psychotropic Substances Act, 1985, Police Station Rahon, District Shaheed Bhagat Singh Nagar.

As per the case of the prosecution, 13 injections of Buprenorphine each containing 02 ml were recovered. The petitioner is in custody since 18.04.2019.

Learned counsel for the petitioner has drawn attention of the Court to the order passed by this Court in the case of husband of the petitioner who was also allegedly falsely implicated in a case under NDPS Act vide FIR No.48 dated 28.04.2018.

Prima facie, this Court found that the case set up by the prosecution is false and in fact, husband of the petitioner was picked up

from his house. The observations made by this Court on 23.10.2018 are extracted as under:-

“Pursuant to the previous order, Investigating Officer, SI Phool Rai, is present in Court. He has filed reply, explaining his presence at the house of the petitioner.

However, learned counsel for the petitioner contested the version given by the Investigating Officer and has submitted that after being picked up from his house, the petitioner was never let off by the police to return to his house. Therefore, the version of Investigating Officer that petitioner was arrested again at 6:00 PM, is factually incorrect. It is further contended that, in continuity of the present case, two more cases have been foisted upon the petitioner.

*It is also contended that in any case, the alleged recovery from the petitioner is of non-commercial quantity. Learned counsel has relied on the judgment of this Court rendered in **CRM-M-35080-2018; Rajvir Singh @ Raju vs. State of Punjab** decided on **21.08.2018**, to support his contention.*

In view of the above, it is ordered that the petitioner be released on interim bail on furnishing bail bonds/surety to the satisfaction of trial Court/Duty Magistrate.

Adjourned to 14.01.2019.

Since there are serious allegations of fabrication of record and keeping the petitioner in illegal confinement, the Investigating Officer, SI Phool Rai, is directed to produce the original of DDR showing the facts as to when the above said Investigating Officer had left for the house of the petitioner; when the police returned from the house of the petitioner and also to show that the Investigating Officer was present on patrolling at that particular time, at the place where the petitioner is alleged to have been arrested.”

Thereafter, the Court confirmed the interim bail granted vide order dated 01.02.2019 which is extracted as under:-

“Present petition has been filed for seeking bail pending trial in

FIR No.48, dated 28.04.2018 for the offences punishable under Sections 22 of NDPS Act, registered at Police Station Rahon, District Shaheed Bhagat Singh Nagar.

Vide interim Order dated 23.10.2018, the petitioner was directed to be released on interim bail and the case was adjourned for 14.01.2019 to produce the original Police Diary wherein the DDR was recorded for the date on which the petitioner was arrested.

Register has been produced by the Investigating Officer.

However, this Court does not wish to express any opinion regarding the entries made in the Register.

Learned counsel for the petitioner submits that in pursuance to the interim order dated 23.10.2018, passed by this Court, the petitioner has already been released on interim bail and he is appearing before the Trial Court.

In view of the above, but without commenting upon the merits of the case, the present petition is allowed and the interim order dated 23.10.2018, passed by this Court, is made absolute.”

Learned counsel for the petitioner further contends that after a period of one year, the petitioner has also been falsely implicated.

It is true that normally the Court does not release the accused who is alleged to have found in possession of narcotics of commercial quantity, however, keeping in view the peculiar facts of the present case and particularly the orders passed by this Court which have been reproduced above and after examining all aspects of the matter, this Court is of the opinion that the petitioner deserves to be granted concession of regular bail. It will be noted here that the question whether entire contents of the injections are to be taken into consideration or only net content of the prohibited substance is taken into consideration is pending consideration before the Hon'ble Supreme Court in the case of Hira Singh and another Vs. Union of India and another, 2017(8) SCC 162.

Without commenting on the merits of the case and keeping in view the fact that the trial of the case is likely to take a long time, the petitioner is directed to be released on regular bail subject to furnishing of adequate personal/surety bonds to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate.

Accordingly, the present petition is allowed.

27.08.2019
D.Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No