

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

**Crl. Misc. M 14010 of 2020 (O&M)
Date of Decision: August 31, 2020**

Manjit Kaur

... Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Tejinder Pal Singh, Advocate,
for the petitioner.

Ms. Samina Dhir ,DAG Punjab.

JAISHREE THAKUR, J.

1. The instant petition is filed seeking the grant of regular bail to the petitioner who is custody pending trial in FIR No. 56 dated 30.10.2019 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the said FIR. It is argued that an alleged recovery of 14 injections of the Buprenorphine and 14 injections of Avil has been shown from the person of the petitioner and that too without following the mandate of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act' for short). It is further argued that even if the allegations in the FIR are believed to be true, though denied, Rule 66 of the NDPS Rules 1985 would be applicable, which allows any person to possess up to hundred doses of the above said psychotropic

substance without any prescription from a registered medical practitioner. It is submitted that each injection allegedly recovered from the petitioner contains 2 ml each of Buprenorphine, therefore the petitioner deserves the concession of regular bail. It is also submitted that the final report under Section 173 of the Code of Criminal Procedure has been filed and due to the prevailing Covid 19 pandemic there is no likelihood of conclusion of trial in the near future. It is also argued that since all the witnesses to be examined are officials, there is little likelihood of the petitioner being in a position to influence them or tamper with the evidence.

3. Learned counsel for the petitioner takes further support from the judgement rendered by this Court in **CRM-M-5207 of 2014** titled as **Salim Mohd. Versus State of Punjab** decided on 4.11.2015 wherein the Division Bench, while relying on Rule 66 of the NDPS Rules 1985, had granted concession of regular bail to the accused therein. He further places reliance upon a judgement rendered by the Supreme Court of India in **Hussain Versus State of Kerala 2000 (4) RCR (Criminal) 348** wherein it has been held that under Rule 66 (2), a person is permitted to keep in his possession for his personal medical use the psychotropic substance up to 100 dosage at a time. While relying upon a judgement rendered by the Delhi High Court in **Rajinder Gupta versus State reported in 2005 (16) RCR (Criminal) 264**, learned counsel for the petitioner would argue that Buprenorphine Hydrochloride is also a medication that is used as a pain reliever, and that as of now is also being used to treat opiate addiction. It is submitted that it has legitimate uses. Reliance is further placed upon a judgement of this Court in **Dr. Rajinder Singla vs. State of Punjab in**

Crl.Misc No. M 37530 of 2015 dated 18.11.2015 where it has been held that Buprenorphine Hydrochloride is a schedule H drug under the Drugs and Cosmetics Act and Rules and though it is a Psychotropic drug under NDPS Act, it is not included in Schedule I to the said rules. Consequently, the court has held that possession is not an offense and punishment under Section 22 of the NDPS Act would not be attracted.

4. Another contention has been raised by the learned counsel for the petitioner that Co-ordinate Benches have allowed regular bail to similarly situated person who have been in custody for possession of 12 injections of buprenorphine, 24 injections of Rexogesic which contains Buprenorphine salt, 35 injection of Buprenorphine in **Dr Rajinder Singla versus State of Punjab CRM-M No. 37530 of 2015, Nitin Rajput alias Raman Versus State of Punjab CRM-M No. 38986 of 2018, Iqbal Singh alias Kala Versus State of Punjab CRM-M No. 613 of 2018, Hitesh Kumar alias Ashu Versus State of Punjab CRM-M No. 25787 of 2017, Amandeep Versus State of Punjab CRM-M No. 250 of 2018, Sonu Versus State of Punjab CRM-M No. 30008 of 2017.**

5. *Per contra*, learned counsel for the respondent—State opposes the grant of regular bail by contending that commercial quantity of Buprenorphine Injections had been recovered from the petitioner and by virtue of the provisions set out in the NDPS Act, bail was to be denied. It is further submitted that the issue of Buprenorphine Injections being a psychotropic substance has been dealt with by this Court in the cases of **Inderjeet Singh alias Laddi Versus State of Punjab 2014 (3)RCR (Criminal) 953** and **Satpal Singh Versus State of Punjab 2018 (5) RCR**

(Criminal) 152 and, therefore the petitioner would not be entitled to regular bail. Learned counsel for the respondent further relies upon a recent judgement rendered by the Supreme Court in **State of Kerala Versus Rajesh 2020 (1) RCR (Criminal) 818** to argue that a liberal approach regarding grant of bail is not called for. Bail may be considered if twin conditions under Section 37 are satisfied, otherwise there is a ban on grant of bail.

6. Admittedly, there is a conflict between the judgements rendered by this Court, as to whether the possession of Buprenorphine Injections would constitute an offence under the NDPS Act and the Rules framed thereunder. The matter has already been referred to a Larger Bench in **Crl. Misc. M 28002 of 2018 titled Anil Kumar @ Nehla Versus State of Punjab on 1.10.2018.**

7. The question, whether the petitioner would be entitled to bail given the rigours of Section 37 of the NDPS Act is to be considered. As per the submissions, the petitioner is a habitual offender and is involved in 17 cases under the NDPS Act. A perusal of the list provided reflects that she has been acquitted in 4 matters and convicted in most matters for possession of small quantities of smack, the largest amount being 85 grams. She has been convicted for possession of heroin powder and sentenced on 31.8.2018 with rigorous imprisonment for 10 years in FIR No. 30 dated 15.4.2015 under Sections 21/22 of the NDPS Act. Again a challan has been presented on 22.08.2019 in FIR No. 29 dated 28.6.2019 for recovery of 20 g of heroin where the trial is pending under Sections 21/31 of the NDPS Act for recovery of 20 gm of heroin. She is now in custody for possession of 14

Buprenorphine Injections, which if declared as a psychotropic drug would be of commercial quantity. The final report under section 173 of the Code of Criminal stands presented as far back as 6.3.2020.

8. This court finds it difficult to agree with the contention of the learned counsel for petitioner that bail ought to be allowed to the petitioner herein considering the history of conviction for 10 years in one of the FIR. She is already facing trial in another FIR No 29 dated 28.6.2017 registered at PS Mukandpur for recovery of 20gm of heroin.

9. Consequently, the petition for grant of regular bail stands dismissed. However before parting with this order, it is held that the petitioner would be entitled to file a fresh petition for grant of regular bail in case the Division Bench decides the reference holding that Buprenorphine is not a psychotropic substance, therefore possession is not an offense and punishment under Section 22 of NDPS Act would not be attracted.

August 31, 2020
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No