

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27347-2020
Date of Decision: 09.12.2020

Labh Singh @ Labha

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Arti Kaur, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J.(ORAL)

The present petition has been filed under Section 439 of Cr.P.C for grant of regular bail to the petitioner in FIR No.52, dated 12.04.2019, under Sections 22 and 29 of the NDPS Act, 1985, registered at Police Station City Nawanshaher, District SBS Nagar.

As per the FIR, the police officials were patrolling in the private vehicle. The secret informer informed that the petitioner and the other co-accused namely, Mahinder Singh @ Mindri were involved in Drug Trafficking. They both were having injections and capsules with them and the petitioner was carrying army coloured kit on his back and both the accused were wearing blue jeans. The petitioner (Labh Singh) was wearing a box design shirt and Mahinder Singh @ Mindri was wearing a blue and yellow box design full sleeve shirt and they were going from Pandora Mohalla via crematorium and then railway crossing road and if raid is

conducted then they both can be caught. Thereafter, the police officials left in search of them and went the railway road to Pandora Mohalla side and on the turn from Mohalla side, two young boys were seen and on seeing the police party coming nearby, both of them ran towards the crematorium. The petitioner took off the kit which he was carrying and threw it away and thereafter ran towards the Mohalla side. Thereafter, the petitioner was apprehended after about one month.

Learned counsel for the petitioner has submitted that the petitioner was falsely implicated in the present case and there was no recovery made from the petitioner and that the alleged recovery has been planted upon the petitioner. He further submits that the petitioner was neither apprehended on the spot nor was any recovery effected from the petitioner. He further submitted that the petitioner is in custody for the last about 1 year and 7 months and investigation of the case is already complete. The challan has been presented and charges have been framed. After framing of the charges, 7 witnesses have been examined and therefore, no useful purpose would be served in case the petitioner is not admitted to bail. He further submitted that the petitioner is suffering from HIV and that his condition is not stable. He further submitted that the alleged recovery was of 76 injections of Buprenorphine, each measuring 2ml and 40 capsules of Spasmo Proxyvon-Plus. He further submitted that so far as the recovery of 76 injections is concerned, the same falls within the proviso of Rule 66 of NDPS Rules and has relied upon the judgment passed in CRM-M-13312 of 2020, titled '*Sukhwinder Singh @ Vicky versus State of Punjab*'. So far as the recovery of 40 capsules is concerned, the same pertains to the salt Tramadol and that weigh 26 grams, which is a non-commercial quantity. He has further submitted that there are two other cases under NDPS Act against

the petitioner which are pending and that in both the cases, the petitioner has been enlarged upon the bail. He has also relied upon the order dated 26.08.2019 of this court passed in CRM-M-21596 of 2019, (Annexure P-3) by which co-accused has already been granted anticipatory bail.

On the other hand, Mr. Luvinder Sofat, AAG, Punjab has submitted that the petitioner is involved in two more cases and therefore, he is not entitled to the grant of regular bail. He further submitted that so far as the recovery of 40 capsules of Tramadol salt is concerned, the same is non-commercial quantity but so far as the recovery of 76 injections of Buprenorphine is concerned, the same falls under the commercial quantity and therefore, the petitioner is not entitled for bail. However, the learned State counsel has stated that the petitioner is not entitled to bail on the ground of parity with other co-accused, granted vide Annexure P-3.

I have heard learned counsel for the parties at length and have perused the record.

The factual position in the present case is not disputed. The petitioner is in custody for about 1 year and 7 months and was involved in two other cases in which he is already on bail. Furthermore, the other co-accused, who is at par with the petitioner, has already been granted anticipatory bail by the co-ordinate Bench of this court vide Annexure P-3. With regard to the alleged recovery of 76 injections of Buprenorphine, as per FIR itself, the same were not recovered from the petitioner. The petitioner was apprehended after one month. The dosage of injections being 76, which is less than 100, would attract the proviso of Rule 66 of NDPS. This court had considered this aspect in '*Sukhwinder Singh @ Vicky versus State of Punjab*' (**supra**) in detail. The use of Buprenorphine, in less dosages can be used for treating withdrawal symptoms and to treat drug

addiction. This aspect is to be considered at the time of trial and therefore it would certainly become a reasonable ground for believing at this stage that petitioner is not guilty and making a departure from the bar contained in Section 37 of the NDPS Act. Furthermore, it is not a case of the State that in case petitioner is released on bail, then he may influence witnesses or tamper with any record.

In view of the totality of the circumstances mentioned above, the present petition is allowed. The petitioner is admitted to bail on his furnishing adequate bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

(JASGURPREET SINGH PURI)
JUDGE

December 09, 2020
Manpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No