

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52372-2019 (O&M)

Date of Decision : 07.08.2020

Shiv Kumar @ Shiv

...Petitioner

Versus

State of Punjab

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. SimsiDhir Malhotra, Advocate for the petitioner.
Mr. Dhruv Dayal, Sr. DAG, Punjab.

B.S. Walia, J. (VC)

Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19pandemic.

1. Prayer in the petition under Section 439Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.157 dated 26.09.2019, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances, Act, 1985 at Police Station Garshankar, District Hoshiarpur.
2. Learned counsel contends that 11 injections of Buprenorphine 2/2 ml. and 145 injections of Pheniramine Maleate Avil 10x10 ml. were recovered from the petitioner, the petitioner has been in custody since 26.09.2019, that the injections of Pheniramine Maleate Avil 10x10 ml. each do not fall within the definition of NDPS Act, that 11 injections of Buprenorphine 2/2 ml. works out to 22 ml., i.e. marginally in excess of the commercial quantity i.e. 20 ml. (i.e. 20 grams), therefore, the petitioner be released on bail as the trial is going to take considerable period of time on

account of prevailing Corona Virus Pandemic and the petitioner has already been in custody since 10 months and 10 days.

3. Learned counsel for the petitioner relies upon a decision of a Co-ordinate Bench of this Court dated 19.06.2020 in CRM-M-14155 of 2020 in case titled as '**Sukhwinder Kumar versus State of Punjab**', in which there was recovery of 85 injections of Avil and 85 injections of Buprenorphine each, containing 02 ml. In said case, the co-ordinate Bench took into account the decision in the case of '**Dalwinder Singh versus State of Punjab**' decided on 03.05.2019 in CRM-M-10753 of 2019 in which the petitioner therein, who was in possession of 15 injections of Buprenorphine, containing 02 ml. each, was granted regular bail on account of his having put in about a year in custody, while in the case of '**Kamaljeet Singh @ Kamal versus State of Punjab**' i.e. CRM-M-4538 of 2019, decided on 13.03.2019, the petitioner therein who was in possession of 12 injections of Buprenorphine, containing 02 ml. each was granted regular bail after having put in about 09 months in custody and in the case of '**Kuldeep Singh versus Union Territory, Chandigarh**' i.e. CRM-M-1400 of 2018, decided on 19.01.2018, the petitioner therein who was in possession of 12 injections of Buprenorphine, containing 02 ml. each, was granted regular bail, after having put in about 03 months in custody. The coordinate Bench after relying on the aforementioned decisions granted bail to Sukhwinder Kumar, after taking into account that he was in custody for 01 year 04 months and 17 days and was not involved in any other case under the NDPS Act, as also the prevailing Corona Virus Pandemic and the conclusion of the trial would likely take some time.

4. *Per contra*, learned State Counsel, on instructions from SI Rakesh Kumar, admits the custody undergone. Learned Sr. DAG also admits that the recovery of 11 injections of Buprenorphine 2/2 ml. works out to 22 ml. i.e. 22 grams only, that commercial quantity of Buprenorphine is 20 ml i.e. 20 gms only while the 145 injections of Pheniramine Maleate Avil 10x10 ml. recovered from the possession of petitioner do not constitute an offence under the NDPS Act. He however, contends that there were 03 other cases under the NDPS Act against the petitioner, although in one case he had been acquitted while in the second case cancellation report had been submitted and in the third case, the petitioner had undergone 03 months of imprisonment.

5. Taking into account the recovery as well as the decision of the coordinate Bench relied upon, besides the fact that the petitioner has been behind bars since 10 months and 10 days, challan has been filed but none of the 09 prosecution witnesses have been examined and the trial is like to take time on account of prevailing Corona Virus Pandemic, I am of the view that no useful purpose would be served by keeping the petitioner behind bars.

6. Accordingly, without commenting upon the merits of the case, the petition for regular bail is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the learned CJM/Trial Court/Duty Magistrate, concerned.

(B.S. Walia)
Judge

August 07, 2020

'Rajneesh-Amit'

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