

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

CRM-M-4736 OF 2021

DATE OF DECISION : 30.04.2021

Amandeep Singh @ Amandeep Ram @ Aman ...Petitioner

Versus

State of Punjab ...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Anterpreet Singh, Advocate,
for the petitioner.

Mr. Amit Mehta, Senior DAG, Punjab.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Petitioner seeks regular bail in case FIR No.74 dated 21.10.2020, registered under Sections 21/22 of Narcotic Drugs and Psychotropic Substances Act (for brevity, NDPS Act), Police Station Aur, District S. B. S. Nagar.

2. Per FIR, on 21.10.2020, at about 5.00 PM, petitioner was seen coming from Phillaur side and going towards Nawanshahar side on a white coloured scooter bearing registration No. PB-32-X-1754. He was apprehended by the police party. Before checking him, police party tried to join an independent witness but no one was available. Upon search of his scooter, one polythene bag was recovered from the dicky from which 13 injections of Buprenorphine (Leeagesic) 2 ml each, 13 injections of Avil and 01 gram of Heroin were recovered, without any permit or license.

3. The petitioner is stated to be in custody since 21.10.2020.

4. Learned counsel for petitioner submits that mandatory requirement under the NDPS Act to search an accused (petitioner herein) in the presence of either a Magistrate or a Gazetted Officer, was not followed. He contends that the petitioner was in fact picked up from his residence and has been falsely implicated in the FIR in question. He further states that the alleged recovery of 13 injections of Avil and 13 injections of Buprenorphine along with 01 gram of Heroin was planted on the petitioner. He submits that in any case, Avil does not fall under the NDPS Act and 01 gram of Heroin, falls under the very small quantity, not warranting any rigors of NDPS Act. As regards 13 injections of Buprenorphine, he submits that the same is marginally higher than the commercial quantity, being 26 grams as against 20 grams. He also argues that Buprenorphine Hydrochloride is a Scheduled drug under the Drugs and Cosmetics Act, 1940 (The Act) though he does not controvert it is also a psychotropic substance under the Act. He, however, contends that possession of psychotropic substance, which is covered under the Act, is not per se prohibited under the NDPS Act. Learned counsel further argues that whether the contraband i.e Buprenorphine would be covered under the Drugs and Cosmetics Act, 1940, is a matter of trial and cannot be determined without appreciating evidence yet to be adduced by the prosecution. In the premise, petitioner ought to be benefit of bail at this stage.

6. In support of his contentions, learned counsel for the petitioner relies on order dated 13.01.2020 passed in CRM-M-2831 of 2019 and order dated 15.06.2020 passed in CRM-M-11417 of 2020, contained at Annexures

P-2 and P-3, respectively and contends that on the grounds of parity also, the petitioner is entitled to bail.

7. Per contra, learned State counsel opposes the bail plea on the ground that quantity recovered from the petitioner is commercial in nature. His antecedents also do not inspire any confidence to accord him the benefit of regular bail as he was earlier involved in a case bearing FIR No.51 dated 26.03.2015 under Section 21 of NDPS Act, registered at Police Station Phillaur, District Jalandhar.

8. On a query of the Court, learned counsel for the petitioner submits that as far as the earlier FIR against the petitioner is concerned, the same is with respect to non-commercial quantity i.e 05 grams of Heroin and the petitioner has been let off on bail and the trial therein is still pending.

9. I have heard the rival contentions of the respective learned counsels.

10. The contentions of learned counsel for petitioner, as noted aforesaid, may have substance but same can only be adjudged at the trial. Since investigation is already over and charges have been framed, the case before the trial court is now fixed for prosecution evidence. The trial is not likely to conclude soon in view of the situation arisen due to pandemic.

11. All the prosecution witnesses are police officials. There, thus, seems no apprehension that petitioner would/can influence or pressurize the witnesses. Investigation is already complete. Challan has been presented. Petitioner is no more required for any further custodial interrogation. The case is now pending for prosecution evidence.

12. Considering the overall scenario, without commenting on the merits of the case, the instant petition is allowed as I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

13. Accordingly, petitioner shall be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/ Duty Magistrate, as the case may be.

14. It is, however, made clear that in case the petitioner is found involved in any other case of similar nature (except FIR No.51 dated 26.03.2015) while on bail, the prosecution shall be at liberty to seek cancellation of their bail.

APRIL 30, 2021
shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No