

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

CRM-M-9939-2020 (O&M)

(1) Harmanpreet Singh @ Harry ... Petitioner

Versus

State of Punjab ... Respondent

(2) **CRM-M-12570-2020 (O&M)**

Avtar Singh @ Tari ... Petitioner

Versus

State of Punjab ... Respondent

(3) **CRM-M-16476-2021 (O&M)**

Deepak Singh ... Petitioner

Versus

State of Punjab ... Respondent

Date of Decision:- 24.8.2021

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Mohit Vashisht, Advocate for the petitioner
in CRM-M-9939-2020 & CRM-M-12570-2020.

Mr. Parmeet Singh Baidwan, Advocate for the petitioner
in CRM-M-16476-2021.

Mr. Ajay Pal Singh, DAG Punjab,
assisted by ASI Amrik Singh.

GURVINDER SINGH GILL, J.

1. This order shall dispose off above mentioned three petitions filed on behalf
of Harmanpreet Singh @ Harry, Avtar Singh @ Tari and Deepak Singh

seeking grant of regular bail in a case registered vide FIR No. 211 dated 9.9.2019 under Section 22 of NDPS Act at Police Station Sirhind, District Fatehgarh Sahib.

2. As per the case of prosecution, on 9.9.2019, when ASI Amarjit Singh was present at the Police Station, then he received information from Head Munshi that SI Suresh Kumar and other police officials who were present at cattle Mandi, Sirhind had apprehended three persons namely Harmanpreet Singh @ Harry, Avtar Singh @ Tari and Deepak Singh @ Deep and it was suspected that they were carrying some intoxicating substance. Pursuant to receipt of said information, ASI Amarjit Singh alongwith ASI Baljit Singh reached at the spot where SI Suresh Kumar alongwith other police officials were present. ASI Amarjit Singh asked the apprehended persons about their names, who disclosed their names as Harmanpreet Singh @ Harry, Avtar Singh @ Tari and Deepak Singh @ Deep. ASI Amarjit Singh introduced himself and extended them an option in terms of Section 50 of NDPS Act as to whether they wanted their search to be effected from some gazetted officer or a Magistrate and apprised them of their rights for the same and who opted to be searched in the presence of a gazetted officer. Consequently, the ASI called DSP Raminder Singh Kahlon at the spot. The DSP, upon reaching at the spot, introduced himself and again extended an offer in terms of Section 50 of NDPS Act but the apprehended persons reposed confidence in him. Pursuant to search of the said three persons, 45 injections of LEEGENSIC Buprenorphine 2 ML each were recovered from Harmanpreet Singh @ Harry. Another 45 injections of LEEGENSIC Buprenorphine 2 ML each were recovered from Avtar Singh and 40

injections of LEEGENSIC Buprenorphine 2 ML each were recovered from Deepak.

3. The learned counsel for the petitioners have submitted that they have falsely been implicated in the instant case and that in any case each of the petitioners can at best be held responsible for recovery which were effected from their individual self and since the recovery from each of the 3 accused was 40 or 45 injections of Buprenorphine, their possession of the same would be protected by Rule 66 of NDPS Rules, as per which an individual may possess upto 100 dosage units at a given time for his personal medical use.
4. Opposing the petitions, the learned State counsel has submitted that it is a case where the accused were caught red handed and that 40 or 45 injections of Buprenorphine were recovered from their possession and as such, their complicity is clearly made out. The learned State counsel has further submitted that none of the petitioners could furnish any document to justify possession of the contraband much less any prescription of doctor to show that it was for their personal medical use.
5. I have heard the learned counsel for the parties. The accused were found in conscious possession of the recovered contraband i.e. Buprenorphine injections regarding which they could not produce any document to justify their possession. The facts show that the safeguards provided under the Act, particularly under Section 50 of NDPS Act, were duly adhered to.
6. Although, much reliance has been placed by learned counsel for the accused on Rule 66 of the NDPS Rules to contend that the recovered 40 or 45

injections of Buprenorphine is within the permissible limits which is 100 injections but this Court is unable to accept the aforesaid contention inasmuch as the petitioners could not show anything to the effect that the same was for their personal medical use. This Court in 2018(5) RCR (Criminal) 883 - Sarbjit Singh @ Sabbi Vs. State of Punjab has adjudicated on the aforesaid issue pertaining to Rule 66 of the NDPS Rules and has turned down the contention of the accused that Rule 66 of the NDPS Rules would confer some kind of immunity to the accused in case, the recovered injections are less than 100 in number. The relevant extract from the said judgment reads as follows:-

“29. This Section 37 of the Act neither exempted any of the provisions of the Act nor excepted any of the provisions of the Rules , rather, it applies secularly to all the provisions of the Act and the Rules , unless the conditions imposed therein have been fulfilled. The two conditions laid down under Section 37 (ibid) authorise a court to take lenient view with regard to grant of bail but those have no concern with Rule 66 of the Rules . Even if it is so provided under the first proviso of sub rule 2 of Rule 66 (ibid), neither this Court shall presume that petitioner is not guilty of such an offence nor there is reasonable ground for believing so.

30. From this angle, this Court is of the view that if a person keeps commercial quantity of the psychotropic substance falling under the schedule, he is not entitled to the benefit of Section 37 of the Act irrespective of the provisions contained in Rule 66 of the Rules.”

7. Even otherwise, the recovered quantity of contraband even if considered individually, as recovered from each of the petitioners, falls in the category

of ‘commercial quantity’, which would attract fetters imposed by section 37 of the Act in the matter of grant of bail. Hon’ble Apex Court in a recent judgement i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioners are not guilty of the offence in question. The petitions are found to be sans merit and are hereby dismissed.

24.8.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No