

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

CRM-M-19143-2021 (O&M)

(1) Harjit Singh Baidwan ... Petitioner

Versus

State of Punjab ... Respondent

(2) **CRM-M-22680-2021 (O&M)**

Gurlal @ Aman ... Petitioner

Versus

State of Punjab ... Respondent

Date of Decision:- 19.8.2021

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Naresh Kaushal, Advocate for the petitioner
in CRM-M-19143-2021.

Mr. Parampreet Singh Paul, Advocate for the petitioner
in CRM-M-22680-2021.

Mr. Ajay Pal Singh, DAG Punjab,
assisted by SI Gagandeep Singh.

GURVINDER SINGH GILL, J.

1. This order shall dispose off above mentioned two petitions filed on behalf of Harjit Singh Baidwan and Gurlal @ Aman seeking grant of regular bail in a case registered vide FIR No. 5 dated 17.1.2021 under Section 22 of NDPS Act at Police Station Phase-11, SAS Nagar (Mohali), Punjab.
2. The allegations, as per FIR, are to the effect that on 17.1.2021 when a police party was present in the area of Sector 66, Mohali for the purpose of

patrolling and checking then one auto-rickshaw which was driven by a Sikh person and alongwith whom one Hindu gentleman was sitting was signalled to stop. However, the driver tried to speed up the auto-rickshaw but the police party was able to stop the same. Upon inquiries, the Sikh gentleman disclosed his name as Harjit Singh Baidwan and the other person disclosed his name as Gurlal. Upon checking the auto-rickshaw, a small black coloured bag was found to be hanging from the driver seat and upon checking the same, 14 injections of Buprenorphine 2 ML each apart from 14 Avil vials 10 ML each and 7 needles were recovered. Both the accused were told that their personal search was also required to be conducted and in case they desired, some gazetted officer or some Magistrate could be called at the spot but they reposed confidence in the ASI. The personal search of the accused did not yield any incriminating article.

3. The learned counsel for the petitioners have submitted that they have falsely been implicated in the instant case and that they cannot be attributed conscious possession of the contraband allegedly recovered. The learned counsel has further submitted that in any case as per Rule 66 of the NDPS Rules, an individual may possess upto 100 dosage units at a time for his personal medical use, and that the recovered quantity is much less than 100 dosage units as permitted under Rule 66 of the NDPS Rules.
4. Opposing the petitions, the learned State counsel has submitted that it is a case where both the accused were caught red handed and that 14 injections of Buprenorphine 2 ML each apart from 14 Avil vials 10 ML each and 7 needles 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. It is a case where both the accused were sitting on the front seat of the auto-rickshaw, which was being driven by Harjit Singh Baidwan and by whose side accused Gurlal was sitting. In such circumstances, Gurlal cannot be said to be a passenger. In case Gurlal was a passenger, he would have been sitting on the rear seat. The fact that Gurlal was sitting on the front seat would show that he was a close acquaintance or a friend of Harjit Singh Baidwan. In these circumstances, both the accused can safely be attributed conscious possession of the recovered contraband i.e. Buprenorphine injections regarding which they could not produce any document to justify their possession.
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 14 injections of Buprenorphine are within the permissible limits which is 100 injections but this Court is unable to accept the aforesaid contention inasmuch as the petitioner 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 while adjudicating on the aforesaid issue pertaining to Rule 66 of the NDPS Rules, 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 which falls in the category of ‘commercial quantity’ 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.

19.8.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No