

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-23060 of 2021 (O&M)

Date of decision:12.10.2021

Lakhvir Chand

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

SUVIR SEHGAL, J. (Oral)

Heard through video conferencing.

CRM No.26327 of 2021

Prayer in the application is for permission to place on record the prescription slip dated 06.08.2021 issued by Tuli Diagnostic Centre, Amritsar, whereby, the petitioner has been diagnosed with blood cancer as Annexure P-9.

Vide order dated 31.08.2021, this Court had issued notice of the application to the State and directed it to verify the document.

In compliance thereto, status report by way of an affidavit of Assistant Superintendent of Police, Sub Division Adampur, Jalandhar has been filed, which is taken on record.

Application is allowed.

Annexure P-9 is taken on record, subject to all just exceptions.

CRM-M-23060 of 2021

This is the second petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in case FIR No.108 dated 26.05.2020 registered under Section 18 of [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short “NDPS Act”) at Police Station Bhogpur, District Jalandhar (Annexure P-1).

As per the version of the prosecution, FIR (Annexure P-1) has been registered when on a chance inspection of an Innova, 6 kg opium was recovered. 2.6 kg opium was found to be tied around waist of Gurpreet Kumar, who was sitting on the co-driver seat and recovery of 3.40 kg of opium was made from underneath seat of Lakhvir Chand (present petitioner), who was driving the vehicle.

Counsel for the petitioner has submitted that first petition (CRM-M-28680 of 2020) was withdrawn after arguments on 19.04.2021 and thereafter, the petitioner has been found to be diagnosed with blood cancer. He has referred to the report (Annexure P-9) to fortify his submission. On a direction issued by this Court, this aspect has been verified and in the status report submitted by way of affidavit, it has been stated as under:-

“4. That ASI Karnail Singh visited Tuli Diagnostic Centre in order to verification of the medical certificate and upon verification ASI Karnail Singh enquired about the Annexure P-

9 from Doctor Robin Tuli who stated that he is running diagnostic lab for conducting various test in his lab of different patients. He further stated that on 06.08.2021 blood sample of Lakhvir Chand was brought before him and he conducted test of said blood samples and submitted report of the same on 07.08.2021 to relatives of patient Lakhvir Chand.

5. That Doctor Robin Tuli has stated that blood test of Lakhvir Chand was conducted to verify BCR/ABL Genes and upon test these genes are found abnormal in the patient Lakhvir Chand.

6. That Dr. Robin Tuli has further stated that he has just given report regarding the blood test and same can be co-related with the opinion of doctor who is giving treatment to patient Lakhvir Chand as patient Lakhvir Chand was referred to him by GND Hospital, Amritsar.

7. That thereafter ASI Karnail Singh got the opinion from Dr. Pashaura Singh Sandhu of GND Hospital Amritsar regarding the medical treatment of petitioner Lakhvir Chand to verify the ailment of Lakhvir Chand.

8. That Dr. Pashaura Singh Sandhu has opined that Lakhvir Chand is suffering from Chronic MycloidLeukaemia.”

Counsel for the petitioner has also made a reference to the disability certificate (Annexure P-7) to submit that wife of the petitioner is 100% disabled, which fact has been verified by the State as is apparent from the status report filed in the main case. He urges that the petitioner has two

minor children, aged 16 years and 10 years and there is no one in the family to take care of them. He submits that even at the time of search and alleged recovery, mandatory provisions of the NDPS Act, have not been complied with. Counsel has also placed reliance upon the order dated 31.08.2021 passed in CRM-M-17021 of 2020, whereby, co-accused, Gurpreet Kumar has been granted the concession of regular bail by this Court. He asserts that the petitioner, who is in custody since 03.06.2020, is no longer required for custodial interrogation as investigation qua him, is complete, challan has been presented and the trial is not progressing.

Per contra, State counsel, upon instructions from ASI Narinder Singh, has opposed the petition on the ground that quantum of recovery effected from the petitioner is commercial and the bar under Section 37 of the NDPS Act, is attracted. Upon further instructions, he submits that though the petitioner is not involved in any other case registered against him under the NDPS Act, yet an FIR against him was registered in the year 2004 for some offence under the Indian Penal Code, 1860. As per his instructions, challan has been presented in September, 2020, charge has been framed on 04.02.2021, but none out of total 09 prosecution witnesses could be examined due to the restricted functioning of the Courts.

Having considered the facts and circumstances of the case, particularly keeping in view the health condition of the petitioner, disability of his wife, the period of incarceration of the petitioner and the fact that the trial is likely to take time to conclude, this Court is *prima facie* of the view that the petitioner deserves to be released on bail.

Without examining the merits or demerits of the arguments addressed by counsel for the parties, the petition is allowed. The petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

While being released on bail, the petitioner shall furnish an undertaking to the effect that he will not get involved in the sale, purchase or trade etc. of prohibited substance and in case, he violates the undertaking, it shall be open to the prosecution to seek cancellation of the bail.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

October 12, 2021

savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>