

CRM-M-26284-2021 (O&M)

THROUGH VIDEO CONFERENCE

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

**CRM-M-26284-2021 (O&M).
Decided on: July 19, 2021.**

Sarabjit Singh

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Mohit Sadana, Advocate,
for the petitioner.**

Mr.Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail in FIR No.255 dated 8.10.2018, under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Bhawanigarh, District Sangrur.

As per the FIR itself the police party received an information that some suspicious persons were coming from main road towards Nidampur at about 05:00 p.m. and when they reached near the Fauji Dhaba they saw three persons sitting near a motorcycle and on seeing the

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police party these persons got confused and tried to run away. They were apprehended with the help of fellow police officials. Some injections were clearly visible in the polythene bag kept on the seat of black colored motorcycle and name and addresses of the apprehended persons were asked. Out of those persons one person was the petitioner and the total recovery came to be 47 injections of Buprenorphine and 47 injections of Promethazine Hydrochloride Injections Phenergan of 25 mg/ml. and even one injection and syringe was found from the pocket of the petitioner.

Learned counsel for the petitioner has submitted that it is a case where the petitioner has been falsely implicated. He has submitted that the petitioner has been facing incarceration in the present case since 8.10.2018 which is more than 2½ years and the prosecution evidence in the present case is already complete. However, defence evidence could not commence due to Covid – 19 pandemic situation prevailing in the State of Punjab. He has submitted that similarly situated co-accused namely Hanish Kumar and Jacky Garg have been granted bail by this Court. Copy of order granting bail to Jacky Garg is attached as Annexure P-2. He has submitted that the petitioner is involved in another case of NDPS Act in which the alleged recovery was of 12 bottles of onerex syrup. He has submitted that in that case also the petitioner has been falsely implicated. He has submitted that in the present case the provisions of Section 50 of the NDPS Act have not been complied with because one syringe and one injection was recovered from the pocket of the petitioner but no gazetted officer was called on the spot and therefore, there was violation of Section 50 of the

NDPS Act.

On the other hand, learned State counsel has submitted that so far as custody period of the petitioner is concerned, it is correct that he is in custody since 8.10.2018 which is more than 2½ years and the entire prosecution evidence is complete and the matter is pending for producing defence evidence. He has further submitted that in the present case the recovery is commercial in nature and therefore, the present petition is hit by Section 37 of the NDPS Act. He has submitted that so far as parity of the petitioner with other co-accused namely Jacky Garg and Hanish Kumar is concerned, the same is not disputed.

I have heard the learned counsel for the parties.

The custody period of more than 2½ years is not disputed by the learned State counsel. It is also not disputed that prosecution evidence is complete but the defence evidence could not commence due to outbreak of Covid – 19 pandemic. So far as bar under Section 37 of the NDPS Act, is concerned, learned counsel for the petitioner has submitted that Section 50 of the NDPS Act has not been complied with because there was recovery of syringe and injection from the pocket of the petitioner but no gazetted officer was called. At the time of consideration of bail application, this Court would certainly go into the submissions made by the learned counsel for the petitioner that prima facie it was a case of holding the petitioner not guilty. Furthermore, as to whether Section 50 of the NDPS Act was complied with or not would be a debatable issue which can be seen only at the time of trial. However, admittedly the gazetted officer was not

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called and therefore, at this stage only, this Court is prima facie of the opinion that more than prima facie case is made out in favour of the petitioner that he is not guilty and a departure can be made from the provisions of Section 37 of the NDPS Act.

So far as pendency of another case against the petitioner is concerned that pertains to small quantity of 12 bottles of onerex syrup that cannot become a ground for denying the bail to the petitioner especially considering the custody period of the petitioner and the stage of the case. Furthermore, it is not the case of the State that in case the petitioner is released on bail then he may tamper with any evidence or may influence any witness or may flee from justice. Moreover, the petitioner is admittedly on parity with co-accused namely Jacky Garg and Hanish Kumar.

Therefore, without commenting upon the merits of the case and considering the totality of the circumstances, the present petition is allowed. It is ordered that the petitioners shall be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

July 19, 2021.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No