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

CRM-M-22534-2020 (O&M)

Date of decision : 28.09.2021

Roopa

...Petitioner

Versus

Union Territory, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ravinder Rana, Advocate for the petitioner.

Mr. Amit Kumar Goyal, Addl. P.P. UT, Chandigarh.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.471 dated 30.12.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) at Police Station Sector 39, Chandigarh.

As per the case of the prosecution, the petitioner was arrested on 30.12.2019 on having been found in possession of contraband and on checking the polythene bag which the petitioner was carrying, a brown colour box was found in which there were 15 injections of Buprenorphine (for short “B”) 2 ml each and 15 injections of Pheniramine Maleate (for short “P”) 10 ml each and the petitioner was not having any permit or

licence with respect to the same.

Learned counsel for the petitioner has submitted that as far as 15 injections of “P” are concerned, the same would not be covered under the Act of 1985. With respect to 15 injections of “B”, two arguments have been raised by him.

First argument of learned counsel for the petitioner is that as per Rule 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter to be referred as “the NDPS Rules”), the petitioner could possess upto 100 dosage units for his personal medical use at a time and has submitted that in the present case, even as per the prosecution case, total quantity of “B” recovered was 30.3 grams. It has been submitted that the case of the petitioner is covered by the said Rules.

Learned counsel for the petitioner has relied upon a judgment passed by the Coordinate Bench of this Court in **Sukhwinder Singh @ Vicky Vs. State of Punjab**, reported as **2021(1) RCR (Criminal) 177**. The relevant portion of the said judgment is reproduced hereinbelow:-

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Learned counsel for the petitioner has submitted that it is a case where allegation pertains to recovery of 70 injections of Pheniramine Maleate 10 ml Avil which is not covered under the NDPS Act and so far as the alleged recovery of 70 injections of Buprenorphine Rexogesic 2 ml is concerned, the same would not constitute an offence as the same was required to be used for personal medical use and therefore, the proceedings against the petitioner are otherwise, bad in law. In this regard, she has further submitted that as per medical science, Buprenorphine is used to treat dependence/addiction to opioids and it belongs to class of

drugs called Mixed opioid agonist - antagonists and it helps for prevention of withdrawal symptoms caused by stopping other opioids and is used as a part of complete treatment programme for drug abuse. She has further submitted that by virtue of proviso contained in Section 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (for short, 'the NDPS Rules') the petitioner could have possessed less than 100 dosage for his personal medical use (although denying that any recovery was made from the petitioner). The provisions of Rule 66 of the aforesaid Rules as substituted vide Notification No. G.S.R.224(E) dated 25.3.2015 (w.e.f. 25.3.2015) are reproduced as under:-

“66. Possession, etc., of psychotropic substances.-

3[(1) No person shall possess any psychotropic substance for any of the purposes covered under 1945 rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these rules:

Provided that possession of a psychotropic substance specified in Schedule I shall be only for the purposes mentioned in chapter VIIA.I

(2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said institution or, as the case may be, the said hospital or dispensary or person.

Provided that where such Psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time:

[Provided further that an individual may possess. the quantity of exceeding one hundred dosage units at a time [but not exceeding- three hundred dosage units at a time] for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.”

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Reliance has been made on a Division Bench judgment of this Court rendered in Saleem Mohd. V. State of Punjab; 2015(25) RCR (Criminal) 816. Relevant portion of the judgment is reproduced as under:-

“5. The petitioner is in custody from last more than two years. There is no other case registered against him under the NDPS Act. The alleged contraband was not recovered from the petitioner’s physical possession as he is said to have got it recovered while in custody.’

6. The petitioner relies upon Rule 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 to contend that even without any medical prescription, 100 doses of such like psychotropic substance could be retained by him.

7. Having heard learned counsel for the parties and taking into consideration the total custody period of

the petitioner; his past antecedents and the legal submission based upon Rule 66 ibid but without expressing any final opinion in relation thereto, we are satisfied that no useful purpose shall be served by keeping the petitioner behind the bars and as such he deserves to be granted the concession of regular bail.”

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However, learned State counsel has opposed the bail on the ground that the alleged recovery from the petitioner was 70 injections of Buprenorphine Rexogesic 2 ml which falls in the commercial quantity and therefore, it is hit by provision of Section 37 of the NDPS Act. She has further submitted that the proviso contained in Rule 66 of the NDPS Rules cannot become a ground for the grant of bail to the petitioner in view of the bar contained under Section 37 of the NDPS Act.

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In the present case it is not in dispute that the petitioner is in custody for more than two years i.e. from 17.08.2018, charges have been framed on 02.02.2019 and that out of 9 prosecution witnesses 4 have been examined. It is also not in dispute that there is no other case against the petitioner except for one earlier case in which he stands discharged. In a Division Bench judgment of this Court in Saleem Mohd.'s case (supra) the petitioner was in custody for more than two years and there was no case registered against him under the NDPS Act and the petitioner had relied upon Rule 66 of the NDPS Rules, 1985 to contend that even without any medical prescription, 100 doses of such like psychotropic substance could be retained by him. This Court while taking into consideration the total custody period of the petitioner, past antecedents and the legal submissions based upon Rule 66 of the NDPS Rules, 1985 but without expressing any final

opinion in relation thereto, granted concession of bail to the petitioner.

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It is not the case of the State that in case the bail is granted to the petitioner then there is likelihood of his tampering with the evidence or influencing of the witnesses nor the same has been pleaded by the learned State counsel. So far as the condition of existence of any reasonable ground for believing that he is not guilty of such an offence is concerned, considering the provisions of Rule 66 of NDPS Rules and aforementioned judgments the petitioner having committed an offence under Section 22 of the NDPS Act would be a debatable issue as it is also subject to fulfillment of ingredients of first proviso to Rule 66(2) of NDPS Rules. In case Rule 66(2) of NDPS Rules is applied in the present case then the same would be a reasonable ground and something more than prima facie ground to believe at this stage that the petitioner is not guilty of the alleged offence. Apart from this, the fact that the petitioner is in custody for more than two years and is not involved in any other case at present is also a relevant factor. The aforesaid observations are only for the purpose of deciding the present bail application and would not in any way reflect any observation on the merits of the case.

Keeping in view the above facts and totality of circumstances of case and without expressing any opinion on the merits of the case, the present petition is allowed. Petitioner is granted the concession of regular bail. He be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the concerned Trial Court/Duty Magistrate.”

A perusal of Rule 66 as well as above judgment would show that a psychotropic substance in possession of an individual for his personal

medical use could be in his possession upto 100 dosage units at a time. It is further apparent that in case the said dosage unit exceeds 100 then only prescription of the Registered Medical Practitioner is required. Reliance in the abovesaid judgment has also been made to the judgment of Division Bench in **Saleem Mohd. Vs. State of Punjab**, reported as **2015(25) RCR (Criminal) 816**.

Learned counsel for the petitioner has submitted that the case of the present petitioner is on a better footing than the case of the petitioner in the abovementioned judgment inasmuch as in the said case, 70 injections of “B” were recovered whereas in the present case, 15 injections of “B” were recovered even as per the prosecution case. Learned counsel for the petitioner has further submitted that the present petitioner has been in custody since 30.12.2019 and is not involved in any other case and there are as many as 14 witnesses out of which none have been examined as yet, although, the charges were framed on 12.02.2021 and the conclusion of the trial is likely to take a long time, moreso in view of the COVID-19 pandemic.

For the second argument, learned counsel for the petitioner has also relied upon judgment passed by the Coordinate Bench of this Court in **Aruna @ Runa Vs. State of U.T. Chandigarh** reported as **2020(2) RCR (Criminal) 766**, to contend that the Coordinate Bench of this Court, after considering that there is conflict of opinion as to whether “B” would fall under the category of psychotropic substance or not and after noticing the same, had granted the concession of regular bail to the person from whom 14 injections of “B” (2ml each) had been recovered and who had been in

custody for about 5 months and 7 days. Learned counsel for the petitioner has submitted that the case of the present petitioner is on a better footing than the petitioner in Aruna @ Runa's case (Supra) inasmuch as the present petitioner has been in custody for about 1 year, 8 months and 29 days and is not involved in any other case and the petitioner has five daughters and one of the daughters is 5 years old and thus, she needs love and affection of the mother.

Learned counsel for the petitioner, in order to overcome the bar under Section 37 of the NDPS Act, has relied upon several judgments. The said judgments have been collated hereinbelow:

- i) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.965 of 2021 titled as **Dheeren Kumar Jaina v. Union of India.**
- ii) Judgment of a Co-ordinate Bench titled as **Ankush Kumar @ Sonu v. State of Punjab** reported as 2018 (4) RCR (Criminal) 84; which was further challenged in the Hon'ble Supreme Court vide SLP (Criminal) Diary No.42609 of 2018 and the same was upheld.
- iii) Judgment of a Co-ordinate Bench in CRM-M-20177-2020 titled as **Narcotic Control Bureau v. Vipansood and another** and the same was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021.
- iv) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.668 of 2020 titled as **"Amit Singh @ Moni v. Himachal Pradesh.**
- v) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.827 of 2021 titled as **Mukarram Hussain v. State of Rajasthan and**

another.

- vi) Judgment of a Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as “**Ajay Kumar @Nannu v. State of Punjab**”.

Further, reliance has also been placed upon the judgment of a Division Bench of this Court in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as, **Harpal Singh v. National Investigating Agency and another**, dated 31.08.2021, wherein the Division Bench was pleased to grant suspension of sentence in a case where the recovery was of commercial quantity. It has been argued that in the said Division Bench judgment, it had been noticed that the grounds for regular bail stand on better footing than for suspension of sentence, which is after conviction.

Learned counsel for U.T. Chandigarh has submitted that as far the reliance upon Aruna @ Runa's case is concerned, the same would not hold good in view of the judgment of the Hon'ble the Supreme Court in **Union of India and another Vs. Sanjeev V. Deshpande**, reported as **2014 (4) RCR (Criminal) 75** and has argued that where the substance is not mentioned in Schedule-I of the NDPS Rules but has been mentioned in the Notification/Schedule to the Act of 1985, then also, the same cannot be taken out of the purview of being a psychotropic substance merely on the ground that it is not covered under Schedule-I of the 1985 Rules. However, with respect to reliance placed upon Rule 66 of the NDPS Rules and the judgment passed in Sukhwinder Singh @ Vicky's case (Supra) by the learned counsel for the petitioner, no meaningful arguments have been addressed by the learned counsel for UT Chandigarh. The fact that 15 injections of “P” would not be covered under the Act of 1985 has not been

disputed by the learned counsel for the UT Chandigarh. Further he has produced on file the custody certificate of the petitioner and has submitted on instructions from SI Major Singh, that the petitioner has been in custody since 30.12.2019 and is not involved in any other case and has also reiterated the fact that there are as many as 14 witnesses out of which none have been examined as yet, although the charges have been framed on 12.02.2021.

This Court has heard the learned counsel for the parties and has perused the paper book.

It is not in dispute that the petitioner was arrested on 30.12.2019 and since then she has been in custody and thus, the actual period undergone as per the custody certificate is 1 year, 8 months and 29 days. It is also not in dispute that the petitioner is not involved in any other case and there are as many as 14 witnesses out of which none have been examined as yet and thus, the conclusion of the trial is likely to take time, moreso, in view of the COVID-19 pandemic. The petitioner is also stated to have 5 daughters out of which the youngest one is 5 years old and needs the care and protection of her mother. The case of the petitioner is on a better footing than the case of the petitioner in Sukhwinder Singh @ Vicky's case (Supra), inasmuch as the recovery in the abovesaid case was of 70 injections of "B" (2ml each) whereas the recovery in the present case was of 15 injections of "B" (2ml each). In the said judgment, after considering Rule 66 of the NDPS Rules, the Coordinate Bench of this Court had granted the concession of regular bail to the petitioner therein, after having noticed the objection of learned counsel for the State that the recovery from the

petitioner therein was of commercial quantity. Rule 66 of the NDPS Rules which has been reproduced above, states that no person shall possess any psychotropic substance unless he is legally authorized to possess the same. However, the proviso to Rule 66(2) states that if such psychotropic substance is in possession of an individual for personal medical use, upto 100 dosages units at a time, it would be covered by the proviso and thus, would not be an offence. In the abovesaid judgment, primarily by relying upon Rule 66 of the NDPS, it was observed that the petitioner therein had a prima facie case and by keeping in view the antecedents of the petitioner therein, the requirements of Section 37 of the Act of 1985 were said to have been met with. Even in the present case, as has been stated hereinabove, the petitioner is not involved in any other case and also has arguable points on merits moreso keeping in view Rule 66 of the NDPS Rules. With respect to the alleged recovery of 15 injections of “P”, it is not in dispute that the same would not be covered under the Act of 1985. Section 8 of the Act of 1985 also needs to be taken note of. The said Section is reproduced hereinbelow:-

“8. Prohibition of certain operations.—No person shall—

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this

Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.”

A perusal of the above Section would show that that an exception has been provided for in Section 8 that in case for any medical or scientific purposes, there is any provision made in the Act or the **Rules**, then the prohibition under Section 8 would not apply. Rule 66 of the 1985 Rules are thus in sync with the provision of Section 8 of the 1985 Act.

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, there the Hon'ble Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the period of custody and the merits of the case, granted bail/suspension of sentence. Some of the said judgments are being discussed hereinafter. In Criminal Appeal No.965 of 2021 titled as **Dheeren Kumar Jaina v. Union of India**, the Hon'ble Supreme Court in a case where allegation in the chargesheet

was with respect to 120 kg of contraband i.e. “ganja”, thus, being of commercial quantity, was pleased to grant bail after setting aside the order of the High Court where the said application for grant of regular bail had been rejected.

A co-ordinate Bench of this Court in a detailed judgment titled as **Ankush Kumar @ Sonu v. State of Punjab** reported as 2018 (4) RCR (Criminal) 84, had considered the provision of Section 37 of the NDPS Act in extenso and had granted bail in a case which involved commercial quantity. The relevant portion of the said judgment is reproduced as under:

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But, so far as second part of Section 37 (1) (b) (ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused would not commit 'any offence' after coming out of the custody, is concerned, this Court finds that this is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record. As held above, this Court cannot go into the future mental state of the mind of the petitioner as to what he would be, likely, doing after getting released on bail. Therefore, if this Court cannot record a reasonable satisfaction that the petitioner is not likely to commit 'any offence' or 'offence under NDPS Act' after being released on bail, then this court, also, does not have any reasonable ground to be satisfied that the petitioner is likely to commit any offence after he is released on bail. Hence, this satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner.”

The Special Leave Petition (Criminal) Diary No.42609 of 2018 filed against the aforesaid judgment of the Co-ordinate Bench of this Court, was dismissed by the Hon'ble Supreme Court.

Further, vide order dated 25.02.2021 in CRM-M-20177-2020, a Co-ordinate Bench of this Court granted regular bail to an accused who was involved in a case wherein recovery was of 3.8 kgs of “charas” (commercial quantity) after being in custody for 1 year and 7 months. The said order was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021 titled as **“Narcotic Control Bureau v. Vipansood and another”**.

The Hon'ble Supreme Court of India vide order dated 12.10.2020 passed in Criminal Appeal No.668 of 2020 titled as **“Amit Singh @ Moni v. Himachal Pradesh”** was pleased to grant regular bail in a case involving 3 kg and 800 grams of “charas” primarily on the ground of substantial custody and also, the fact that the trial would likely take time to conclude.

In Criminal Appeal No.827 of 2021 titled as **Mukarram Hussain v. State of Rajasthan and another**, the Hon'ble Apex Court vide judgment dated 16.8.2021 was also pleased to grant bail wherein the quantity of the contraband was commercial in nature.

A Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as **Ajay Kumar @Nannu v. State of Punjab** and other connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the NDPS Act, was pleased to grant regular bail in a case involving commercial quantity and a condition was imposed on the petitioner therein while granting the said bail and the said condition was incorporated in para 21 of the said judgment, which reads as under:

“21. However, the petitioners are granted regular bail subject

to the condition that they shall not commit any offence under the NDPS Act after their release on bail and in case of commission of any such offence by them after their release on bail, their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.”

Further, a Division Bench of this Court vide judgment dated 31.08.2021 passed in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as, **Harpal Singh v. National Investigating Agency and another**, granted suspension of sentence in a case where the recovery was of commercial quantity. In the abovementioned order, the Division Bench had taken into consideration the right vested with an accused person/convict under Article 21 of the Constitution of India with regard to speedy trial. Further, the judgment of Hon'ble the Supreme Court in **State (NCT of Delhi) v. Lokesh Chadha**; (2021) 5 SCC 724 was also taken into account and the provisions of Section 37 of NDPS Act were considered and the sentence of the applicant-appellant therein was suspended after primarily considering the period of custody of the applicant-appellant therein and also the fact that the appeal was not likely to be heard in near future. Reference in the order was also made to the Division Bench judgment of this Court in **Daler Singh v. State of Punjab**; 2007 (1) R.C.R. (Criminal) 316 and the view taken in Daler Singh's case (supra) was reiterated and followed. In the above said judgment, it was also noticed that the grounds for regular bail stand on a better footing than that of suspension of sentence which is after conviction. It is apparent that to meet the requirement of Section 37 of the NDPS Act, various Courts have taken into consideration the merits of the case and the period of custody and where in a case there are arguable points on merits

and the custody is also adequate, the Hon'ble Supreme as well as various High Courts have granted bail even in cases involving commercial quantity. This Court feels that in the present case, there are several arguable points which have been raised by the learned counsel for the petitioner and the petitioner has been in custody for 01 year 08 months and 29 days and the same is sufficient to entitle the petitioner for grant of regular bail. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to her not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize / intimidate the prosecution witness (s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.
5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the

prosecution shall be at liberty to move an application for cancellation of bail before this Court.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

28.09.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No