

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

CRM-M-35268-2021

Date of Decision: 16.09.2021

Vipin Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Baljeet Beniwal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana
for the respondent-State.

AVNEESH JHINGAN , J.(Oral)

1. This petition under Section 439 of the Code of Criminal Procedure is filed seeking regular bail in FIR No. 133 dated 05.06.2021 under Sections 22 (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered at Police Station Sector 17, Faridabad, District Faridabad.

2. Brief facts of the case are that the police officials received a secret information on 05.06.2021 that Vipin Kumar-petitioner is indulging in sale of intoxicated injections and at that time he was present at Sector 17, by-pass road. Finding the information worth reliance, raid was conducted. Twenty five injections of Buprenorphine 2 ml each total 50 ml were recovered from the petitioner. He was asked to produce the licence or prescription for injections possessed, he failed to do so.

3. Learned counsel for the petitioner submits that as per Rule 66

Rules') an individual is entitled to keep upto 100 dosage units for personal medical use. The contention is that till 99 dosage, the presumption is that it is for personal use. He relies upon the Division Bench judgment of this Court in **Saleem Mohd. V. State of Punjab, 2015 (25) R.C.R. (Criminal) 816**. He further relies on custody of the petitioner since 05.06.2021 for seeking bail.

4. Learned counsel for the State submits that in spite of given an opportunity, petitioner was not able to produce any medical prescription. She further submits that raid was conducted on a specific information and recovery was made.

5. Rule 66 is quoted below:

66. Possession, etc., of psychotropic substances.- (1) No person shall possess 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.

(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 research 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 (2) shall maintain proper accounts and records in relation to the purchase and psychotropic substance in their possession.”

6. As per Rule 66(1) possession of psychotropic substance is prohibited unless the individual is lawfully authorized to possess the same.

7. Sub-rule(2) permits research institution, hospital or dispensary to keep without authorization reasonable quantity of psychotropic substance necessary for their genuine scientific and medical requirements.

8. As per first proviso to sub-rule(2), an individual for his personal medical use can keep quantity not exceeding 100 dosage at a time.

9. Second proviso to sub-rule(2) authorizes possession of more than 100 dosage but less than 300 dosage where it is for personal long term medical use but has to be specifically prescribed by registered medical practitioner.

10. The argument that first proviso to sub-rule(2) raises a presumption that possession of less than 100 dosage of psychotropic substance shall be for personal use is not well founded. The provisions of the Act are stringent. Rule 66 gives a little leverage for possessing the psychotropic substances for personal medical use. Minimum what is required for seeking protection of the rule is, a claim that the psychotropic substance is for personal medical use. The reading of the phrase “for personal medical use” itself pre-requires a person to be in a condition necessitating the use of psychotropic substance possessed by him as medicine.

11. The reliance on Saleem Mohd's case (supra) is of no avail as the Division Bench never expressed final opinion on the submission made on Rule 66.

Without going into the arguments in detail as to whether as per

the first proviso to sub-rule(2) of Rule 66, a medical prescription is required or not, the contention of the petitioner is rejected as he never produced any evidence that the injections recovered were for personal use. Even today there is no document annexed to substantiate the claim of personal use.

13. The recovery from the petitioner is of commercial quantity. No argument has been put forth to meet the twin conditions required under Section 37 of the Act for grant of bail, in case of recovery of commercial quantity.

14. No case is made out for grant of bail.

15. Dismissed.

(AVNEESH JHINGAN)
JUDGE

16.09.2021

Parveen Sharma

Whether reasoned/speaking	Yes
Whether reportable	Yes