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

CRM-M-9496-2022

Date of Decision: 31.05.2022

Rakesh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Balraj Gujjar, Advocate,
for the petitioner.

Ms. Shivani Sharma, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

This is the second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.80 dated 03.02.2021, under Section 22-C, 61 & 85 of the N.D.P.S. Act, 1985, registered at Police Station Sector-7, Faridabad, District Faridabad.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 03.02.2021, thereafter, he was granted interim bail on 19.05.2021 and then he surrendered on 16.07.2021 and in this way the petitioner has faced incarceration for more than one year. He further submitted that even as per the allegations in the FIR, there was a recovery of 24 injections of *Buprenorphine* containing 2 ml. each and totalling to 48 ml. and there was also a recovery of 28 injections of *Buprenorphine* from the co-accused, namely, Sachin. He also submitted that the petitioner has got clean antecedents and is not involved in any other case under the N.D.P.S.

Act and the present case was planted upon him. He relied upon the judgment of this Court in “**Sukhwinder Singh @ Vicky Vs. State of Punjab**”, 2021(1) RCR (Criminal) 177, to contend that a person is permitted to keep up to 100 dosages for the purpose of medical use without any prescription as per the Rule 66 of the N.D.P.S. Rules and considering the fact that the petitioner has faced incarceration for more than one year, he may be considered for the grant of bail. He further submitted that the rigor of Section 37 of the N.D.P.S. Act will not apply in the present case in view of the aforesaid facts and circumstances.

On the other hand, Ms. Shivani Sharma, learned AAG, Haryana, has submitted that it is correct that the petitioner has faced incarceration for more than one year and only one prosecution witness is examined. She further submitted that it is also correct that the petitioner is not involved in any other case.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for more than one year and is not involved in any other case under the N.D.P.S. Act. The allegations against the petitioner were that there was a recovery of 24 injections of *Buprenorphine* containing 2 ml. each and 28 injections of *Buprenorphine* from the co-accused, namely, Sachin but it is less than 100 dosage from the petitioner. Therefore, in view of the judgment of ***Sukhwinder Singh @ Vicky's case (Supra)***, the petitioner is entitled for the grant of regular bail. The recovery from the petitioner does fall in the category of commercial quantity and therefore, the bar contained under Section 37 of the N.D.P.S. Act is required to be considered. As per Rule 66

of the N.D.P.S. Rules, a person is permitted to keep up to 100 dosage of *Buprenorphine* for the purpose of medical use without any prescription and the petitioner is not involved in any other case as per the learned counsel for the parties nor it is not the case of the State that in case the petitioner is released on bail then he may influence any witness or may repeat the offence or may abscond or flee from justice. Therefore, both the conditions for making a departure from the bar contained under Section 37 of the N.D.P.S. Act remain satisfied.

In view of the aforesaid facts and circumstances, this Court has reasons to believe that the petitioner is not guilty of any offence at least at this stage.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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

31.05.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |