

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11290-2021
Date of Decision: 30.03.2022

Deepak Kumar @ Deepa @ Lahantiya

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Kanwal S. Walia, Advocate, for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 13 dated 03.02.2020, under Sections 22/61/85 of the NDPS Act, registered at Police Station Mehatpur, District Jalandhar.

The learned counsel for the petitioner has submitted that the petitioner is in custody since 03.02.2020 which is almost 2 years and 2 months and out of total 9 prosecution witnesses 2 have been examined. She further submitted that the petitioner is not involved in any other case pertaining to NDPS Act and the recovery in the present case was 11 vials of Buprenorphine and 11 bottles of Pheniramine Maleate. She further submitted that so far as the 11 bottles of Pheniramine Maleate are concerned, the same does not fall in the scope of the NDPS Act but so far as the salt of Buprenorphine is concerned, the total comes out to be 22 ml

and since the petitioner is not involved in any other case pertaining to the NDPS Act and the petitioner is in custody from 3.02.2020 which is almost 2 years and 2 months and in view of the provisions of Rule 66 of the NDPS Rules, the petitioner is entitled for the grant of regular bail. She has also referred to a judgment of this Court in **Sukhwinder Singh @ Vicky Vs State of Punjab, 2021 (1) RCR (Crl.) 177.** in support of her contentions in this regard.

On the other hand, the learned State counsel has submitted that it is correct that the petitioner is not involved in any other case under the NDPS Act and the petitioner is in custody from 03.02.2020. He has however opposed the grant of bail on the ground that the total weight was marginally above the commercial quantity which is 20 ml.

I have heard the learned counsel for the parties.

The petitioner is in custody from 03.02.2020 and he is not involved in any other case pertaining to the NDPS Act. The commercial quantity under the provisions of the NDPS Act is 20 ml whereas the total alleged quantity in the present case is 22 ml which is marginally high. Although it is marginally high the effect of Section 37 of the NDPS Act is required to be considered. Under Rule 66 of the NDPS Rules a person can keep upto 100 doses without prescription of Buprenorphine because the salt of Buprenorphine is known to be a medicine used in the medical science for de-addiction purposes apart from being a pain killer. A reference may also be made to the judgment of this Court in **Sukhwinder Singh @ Vicky Vs State of Punjab (Supra).** wherein the aforesaid Rule 66 has been discussed in detail.

Therefore, considering the aforesaid facts and circumstances

particularly the long custody of the petitioner as well as the total alleged quantity recovered from the petitioner the bar contained under Section 37 of the NDPS Act would not be applicable since the conditions for making the departure from the bar contained aforesaid are satisfied. This Court has reason to believe on the basis of aforesaid facts and circumstances that the petitioner is not the guilty at least at this stage and it is not the case of the State that in case the petitioner is released on bail, then he may repeat the offence.

Therefore considering the aforesaid facts and circumstances of the present case, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned 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 for the purpose of deciding the present petition only.

30.03.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)**JUDGE**

: Yes/No
: Yes/No