

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

219

CRM-M-12389-2022
Decided on : 21.07.2022

Rajjat Sharma
Versus
State of Punjab
... Petitioner
... Respondent

AND

CRM-M-16063-2022

Sukhwinder Singh @ Sukhi
Versus
State of Punjab
... Petitioner
... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Avtar Krishan Handa, Advocate
for the petitioners in CRM-M-12389-2022.

Mr. Harish Goyal, Advocate
for the petitioner in CRM-M-16063-2022.

Mr. Sukhbeer Singh, AAG, Punjab.

By virtue of this common order, this Court proposes to dispose of two petitions for grant of regular bail in case bearing FIR No. 134 dated 18.09.2021 under Sections 21, 29, 22(c), 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 379, 411, 475 and 482 of the Indian Penal Code, 1860 registered at Police Station Balongi, District SAS Nagar. CRM-M-12389-2022 has been filed by petitioner Rajjat Sharma and CRM-M-16063-2022 has been filed by

petitioner Sukhwinder Singh @ Sukhi. For the sake of convenience, case bearing No. CRM-M-12389-2022 is being treated as the lead case and the facts are being taken therefrom.

Learned counsel for the petitioner(s) have jointly submitted that both the petitioners have been in custody since 18.09.2021 and out of 16 prosecution witnesses, only one witness has been examined and thus, the trial is likely to take time. It is further submitted that from each of the petitioner, there is a recovery of 10 injections of Buprenorphine and 10 vials of Avil. It is submitted that as far as Avil is concerned, it would not come under the NDPS Act and as far as the 10 injections of Buprenorphine are concerned, the same would not fall within the ambit of commercial quantity. It is argued that every injection has the capacity to hold 2 ml, which would be equivalent to 2 gms. It is further argued that at best, the total recovery from each of the petitioner, who were the pillion riders on two separate motorcycles would amount to 20 gms. It is contended that Buprenorphine is shown as entry no. 169 in the table/chart and as per the definition of commercial quantity in Section 2 (viia) of the NDPS Act, the quantity which is more than the one which has been mentioned in the table would be commercial quantity and thus, the alleged recovery would fall within the category of non-commercial quantity. It is submitted that the co-accused of the petitioners i.e., Harinder Singh and Gagandeep Singh @ Manga from whom the recovery of 5 injections of Buprenorphine (each) has been effected have

been granted the concession of regular bail by a Coordinate Bench of this Court vide order dated 03.12.2021 and 04.03.2022 respectively.

Learned State counsel has opposed the present application for regular bail and has submitted that the quantity recovered from each of the petitioners is only marginally less than the commercial quantity and in case the quantity recovered was more than 20 gms., then it would fall under commercial quantity. It is further submitted that the petitioner namely Sukhwinder Singh @ Sukhi is involved in one more case and there is no other case against the petitioner namely Rajjat Sharma.

Learned counsel for the petitioner, in rebuttal, has submitted that Sukhwinder Singh @ Sukhi has been released on regular bail in the said case and has submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon judgment passed by the Hon'ble Supreme Court in case titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others*** reported as 2012 (2) SCC 382 reference has been made to the relevant portion of paragraph 6 which is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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

Section 2 (vii-a) of the NDPS Act is reproduced as under:-

“2 (vii-a): “Commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;”

A perusal of the above definition of commercial quantity would show that in relation to Narcotic Drugs and Psychotropic Substances, any quantity which is ‘greater’ than the quantity specified by the Central Government by notification in the official gazette would fall within the definition of commercial quantity. The relevant portion of the chart/table which enumerates various narcotic drugs and psychotropic substances and also specifies the quantity on account of which either the drug would be less than small quantity or between small quantity and commercial quantity or commercial quantity, is reproduced hereinbelow:-

“Notification specifying small quantity and Commercial Quantity.

In exercise of the powers conferred by clauses (viia) and (xxiiia) of Section 2 of Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and in supersession of Ministry of Finance, Department of Revenue Notification S.O. 527(E) dated 16th July, 1996, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies the quantity mentioned in columns 5 and 6 of the Table below, in relation to the narcotic drug or psychotropic substance

mentioned in the corresponding entry in columns 2 to 4 of the said Table, as the small quantity and commercial quantity respectively for the purposes of the said clauses of that Section.

Table

(See sub-clauses vii(a) and xxiii(a) of Section 2 of the Act)

Sr. No.	Name of Narcotic and Psychotropic Substance (International proprietary name (INN))	Other non proprietary name	Chemical name quantity (In gm.)	Small	Commercial Quantity (in gm./kg)
	2	3	4	5	6
169	Buprenorphine		21-cyclopropyl-7-alpha[(S)-I-hydroxy-1,2,2-trimethylpropyl]-6, 14, endo-ethano-6,7,8,14-tetrahydrooripavine	1	20
X	X	X	X	X	X

A conjoint reading of Section 2 (vii-a) and the table would show that the quantity more than 20 gms would be commercial quantity.

In the present case, since as per the prosecution case, the recovery from each of the petitioners is 10 injections of Buprenorphine and the quantity of the intoxicant substance thus recovered would be 20 gms from each petitioner and thus, bar under Section 37 of the NDPS Act would not apply in the present case. The petitioners have been in custody since 18.09.2021 and there are as many as 16 prosecution

witnesses out of whom, only one witness has been examined and thus, the trial is likely to take time. The co-accused of the petitioners i.e, Harinder Singh and Gagandeep Singh @ Manga, have already been granted the concession of regular bail by a Coordinate Bench of this Court .

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to them not being required in any other case.

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

It is made clear, in case, the petitioner threatens or influences any witness, it would be open to the State to move an application for cancellation of the present regular bail granted to the petitioners.

(VIKAS BAHL)
JUDGE

21.07.2022

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No