

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

1. CRM-M-17325-2021 (O&M) **Date of Decision: 14.03.2022**

Harvinder Kumar ...Petitioner

Versus

State of Punjab ...Respondent

2. CRM-M-9609-2021

Gurpreet Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shiv Kumar Sharma, Advocate
for the petitioner in CRM-M-17325-2022 (O&M).

Mr. G.S. Salana, Advocate for
Mr. Rakesh Gupta, Advocate
for the petitioner in CRM-M-9609-2021.

Mr. R.S. Thind, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J.(ORAL)

1. Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners in the same FIR No.0014, dated 14.01.2021 under Sections 22 and 61 of NDPS Act, registered at P.S. Lalru, District SAS Nagar (Mohali) and are being disposed off together. For the sake of brevity, the facts are being taken up from CRM-9609-2021, titled 'Gurpreet Singh v. State of Punjab'.

2. As per the FIR, both the petitioners were arrested on 12.01.2021 in FIR no. 0010 under Sections 307 and 506 of IPC and Section 25 of Arms

place and they used firearms, although no injury was inflicted upon anybody and the dispute was regarding non-delivery of food. Thereafter, during their interrogation, they had also stated before the police with regard to the recovery of car used and some intoxicant was found in the car. Thereafter, the procedure under the NDPS Act was followed and there was a recovery of 15 injections of Buprenorphine and some injections of Avil from the car and thereafter the present FIR i.e. 0014, dated 14.01.2021 was lodged under Sections 22 and 61 of the NDPS Act. On a query put to learned State counsel as to how the second FIR was lodged pertaining to the earlier cause of action, he submitted that in the earlier FIR, the ASI and the Investigating Officer was not regular ASI and was not competent under the NDPS Act and therefore, for the purpose of lodging FIR under the NDPS Act, a competent officer was required and therefore, a separate FIR has been lodged.

3. Both the learned counsels for the petitioners has submitted that the petitioners are in custody for the last one year and two months. The investigation of the case is complete and the challan has been presented and they are already on bail in the earlier FIR No. 0010 of 12.01.2021. They have submitted that although the total quantity of 60 ml of Buprenorphine was commercial in nature but as per the Rule 66 of NDPS Rules, the same can be kept for medical purposes without prescription and has also relied upon two judgments of this Court passed in **Sukhwinder Singh @ Vicky vs. State of Punjab, 2012 (2) RCR (Criminal) 330** and a Division Bench judgment of this Court in **Saleem Mohd. vs. State of Punjab, 2015 (25) R.C.R. (Criminal) 816** and therefore, the bar contained in Section 37 of the NDPS Act, would not apply in the present case. Both the learned counsels have further submitted that so far as the injection of Avil is concerned, the same does not fall within the purview of the NDPS Act. They have also submitted

that the petitioners are not involved in any other case and therefore, in view of the aforesaid facts and circumstances of the present case, the petitioners may be considered for grant of regular bail.

4. On the other hand, learned State counsel has submitted that it is correct that the petitioners are in custody for the last one year and two months and the investigation of the case is already complete. He further submitted that both the petitioners are involved in another case under Section 307 IPC which is connected with the present case, which was lodged as aforesaid on 12.01.2021. He further submitted that Gurpreet Singh is not involved in any other case apart from the aforesaid case and the petitioner Harvinder Kumar is involved in another case of NDPS Act.

5. I have heard the learned counsel for the parties.

6. The petitioners are in custody for 1 year and 2 months and after investigation of the case, the challan has been presented. The other case in which the petitioners are involved pertains to Section 307, which is connected with the present case and the alleged recovery from the petitioners in the present case is 60 ml of Buprenorphine, which is less than 100 doses and therefore, the judgment passed by this Court in Sukhwinder Singh @ Vicky (supra) and Division Bench judgment in Saleem Mohd. (supra), will be applicable in the present case looking from the angle of Section 37 of the NDPS Act. So far as, Avil is concerned, the same does not fall within the purview of the NDPS Act. Therefore, at this stage, the bar contained in Section 37 of the NDPS Act, will not apply to the petitioners. Furthermore, the State has not taken up the plea that in case the petitioners are released on bail, then they may tamper with evidence or may flee from justice. So far as the case under NDPS against one of the accused Harvinder Kumar is concerned, it has been stated in the affidavit filed by the State that the petitioner Harvinder

Kumar has been granted default bail in the aforesaid case. A perusal of the affidavit would also show that it has not been stated by the State that there is any apprehension that in case the petitioner is granted bail, he would repeat the offence or may flee from justice.

7. Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant bail to both the petitioners. Consequently, both the present petitions are allowed and the petitioners are released on bail on their furnishing adequate bail/ surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Duty Magistrate, concerned.

8. It is made clear that the aforesaid observations would not mean anything on the merits of the case as the same are only for the purpose of deciding the present petitions.

(JASGURPREET SINGH PURI)
JUDGE

March 14, 2022
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No