

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

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CRM-M-15915-2022

Date of Decision : April 25, 2022

MANDEEP SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Ravinder Singh, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.105 dated 14.8.2021 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Shambu, District Patiala.

It has been submitted by the the learned counsel for the petitioner that the petitioner is in custody from 14.8.2021 and the investigation of the case has been completed and charges have been framed. He submitted that it is a case where there was no recovery from the conscious possession of the petitioner and as per the allegation the petitioner was only a pillion rider and the motor cycle was being driven by one Arun Kumar and there was a recovery of 75 injections of Buprenorphine and 75 injections of Avil. He further submitted that so far as the injections of Avil is concerned, the same do not fall within the purview of the NDPS Act and so far as the injections of Buprenorphine are concerned, the alleged recovery from the motor cycle was 75 injections of Buprenorphine contained 2 ml each and, therefore, the total of the same comes to 150 ml. he submitted that the petitioner is not

involved in any other case and has clean antecedents and he is a HIV positive patient. He relies upon the judgment of this Court in **Sukhwinder Singh @ Vicky Vs. State of Punjab, 2021(1) R.C.R. (Criminal) 177** to contend that even otherwise also under Rule 66 of NDPS Rules injections of Buprenorphine can be possessed upto 100 doses and the petitioner himself is a HIV positive patient. He further submitted that considering the totality of the aforesaid circumstances, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner.

On the other hand, the learned State counsel has submitted that it is correct that the petitioner is in custody from 14.8.2021 and the investigation of the case has been completed and the charges have been framed and now the case is fixed for prosecution evidence. However, he has opposed the grant of regular bail to the petitioner on the ground of bar contained under Section 37 of the NDPS Act. So far his involvement in other cases is concerned, he has submitted that it is correct that the petitioner is not involved in any other case.

I have heard the learned counsels for the parties.

The petitioner is in custody from 14.8.2021. The allegation against the petitioner was that he was a pillion rider and the recovery was of 75 injections of Buprenorphine was made from the dickey of the motor cycle and the petitioner has clean antecedents and is not involved in any other case. As per the learned counsel for the petitioner, the petitioner is a HIV positive patient and as per the judgment passed by this Court in Sukhwinder Singh's case (Supra), the injections of Buprenorphine can be possessed for medical purposes when the doses are less than 100.

After hearing learned counsel for the parties, this Court is of the considered view that the bar contained under Section 37 of NDPS Act will not apply in the present case. This Court is satisfied that prima facie there are reasons to believe that the petitioner is not guilty of the offence in view of the fact that firstly the total recovery was of 75 injections of Buprenorphine which is less than 100 doses and secondly it is not the

case of the State that in case the petitioner is released on bail then he may abscond from justice or may repeat the offence and, therefore, both the conditions pertaining to the departure from the bar contained under Section 37 of NDPS Act would be satisfied especially in view of the fact that the petitioner has clean antecedents and he is a HIV positive patient.

Therefore, considering the totality of the circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner.

Consequently, the petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

April 25, 2022

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No