

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

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CRM-M-17964-2022

Date of Decision : **May 06, 2022**

KAPIL @ BHALU

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Johan Kumaar, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

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.257 dated 14.6.2021 under Section 22(c)/29-61-85 of NDPS Act, registered at Police Station Dabua, Faridabad.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 27.9.2021 and the investigation of the case has been completed and the challan has been presented. He submitted that in the present case, the petitioner was falsely implicated and as per the allegation contained in the FIR when the police party reached at the spot the petitioner had fled away from the spot by throwing bag. He further submitted that the present case was planted upon the petitioner and it is also a disputed question which is to be seen at the time of the trial as to whether the bag belonged to the petitioner or not. He submitted that the petitioner has clean antecedents and is not

involved in any other case. He further submitted that the alleged recovery shown from the bag was 29 injections of Buprenorphine containing 2 ml each which although falls in the commercial quantity but the bar contained under Section 37 of NDPS Act will not apply in the present case in view of the judgment of this Court in **Sukhwinder Singh @ Vicky Vs. State of Punjab, 2021(1) R.C.R.(Criminal) 177** and Rule 66 of NDPS Act because it can be established at the time of the trial that the same was to be used for the medical purposes.

On the other hand, the learned State counsel has submitted on instructions from ASI Jasbir that it is correct that the petitioner is in custody from 27.9.2021 and the petitioner is not involved in any other case. He further submitted that the investigation of the case has been completed and the alleged recovery from the petitioner was only 29 injections of Buprenorphine containing 2 ml each.

I have heard the learned counsels for the parties.

The petitioner is in custody from 27.9.2021 and the investigation of the case has been completed and the petitioner is not involved in any other case. The alleged recovery of 29 injections of Buprenorphine containing 2 ml each. The said quantity falls in the category of commercial quantity but in view of the judgment of this Court in **Sukhwinder Singh @ Vicky's case (Supra)**, the said quantity of injections can be carried for medical purposes without prescription and the same can be seen only at the time of trial. So far as the first ingredient pertaining to departure from the bar contained under Section 37 of NDPS Act, this Court is of the prima facie view that considering the

fact that there was no recovery from the conscious possession of the petitioner prima facie there are reasons to believe that the petitioner is not guilty of the offence especially in view of the judgment of this Court in Sukhwinder Singh @ Vicky's case (Supra). So far as the second ingredient for making departure from the bar contained under Section 37 of NDPS Act is concerned, it is not the case of the State that in case the petitioner is released on bail then he may repeat the offence especially in view of the fact that the petitioner is not involved in any other case and has clean antecedents. Therefore, both the conditions for making a departure from the bar contained under Section 37 of NDPS Act remain satisfied.

In view of the above and considering the totality of the circumstances of the present case, I deem 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.

May 06, 2022
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(JASGURPREET SINGH PURI)
JUDGE

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