

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

CRM-M-20525-2021 (O&M)
Date of Decision:- 25.2.2022

Shahbaz Malik

...Petitioner

Versus

UT Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Rohit Mahajan, Advocate for the petitioner.

Mr. Rajeev Anand, Addl. P.P. UT, Chandigarh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 269 dated 30.8.2020 under Section 22 of the NDPS Act at Police Station Sector 39, Chandigarh.
2. The case of the prosecution is that on 30.8.2020, when a police party was present on the road leading to Teen Colony, then at about 2:20 p.m., a boy wearing black coloured full sleeves T-shirt and black lower was seen carrying a black blue coloured bag. Upon noticing the police party, he tried to retrace his steps and tried to throw away the black blue coloured bag carried by him. However, he was apprehended by the police. Upon inquiry, he disclosed his name as Shahbaz Malik. Upon checking of the bag, the same was found to contain 50 injections of 'Buprenorphine', 2 ml each, and another 20 injections of 'Pheniramine Maleate', 10 ml each. The said person could not produce any license or permit to justify his possession.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that 'Buprenorphine', in any case, is a medicine which is commonly used for alleviating pain and possession of the same cannot be said to attract offence under NDPS Act. The learned counsel has further submitted that in any case since the petitioner has been behind bars for a substantial period of 1 year and 5 months and only 2 out of the cited 13 prosecution witnesses have been examined, the petitioner deserves the concession of bail.
4. On the other hand, the learned State counsel has submitted that since a 'commercial quantity' of contraband was recovered from the petitioner, no case for grant of bail is made out. The learned State counsel has, however, informed that the petitioner has been in custody since 30.8.2020 i.e. since the last about 1 year and 5 months and that as on date only 2 out of the cited 13 prosecution witnesses have been examined.
5. I have considered rival submissions addressed before this Court.
6. Having regard to the facts and circumstances of the case, particularly the fact that the petitioner was caught red-handed while in possession of a 'commercial quantity' of contraband and in respect of possession of which he could not produce any license or permit, the petitioner can *prima facie* be said to have committed an offence under the NDPS Act.
7. Even otherwise, the recovered quantity of contraband which falls in the category of 'commercial quantity' would attract fetters imposed by Section 37 of the Act in the matter for grant of bail. Hon'ble Apex Court in a recent judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by

Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question or that in case granted bail, he will not flee from justice. As such, no case is made out for grant of bail to the petitioner. The petition is sans merit and is hereby dismissed.

25.2.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No