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

CRM-M-20341-2022

Date of Decision: 05.08.2022

Arun Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amandeep Singh Saini, Advocate,
for the petitioner.

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

JASGURPREET SINGH PURI, J. (ORAL)

This is the second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.105 dated 14.08.2021, under Sections 22/61/85 of the NDPS Act, registered at Police Station Shambu, District Patiala.

It has been submitted by learned counsel for the petitioner that the petitioner had earlier filed a petition for grant of regular bail in CRM-M-50503-2021, which was dismissed by this Court on 07.02.2022, since, at that point of time, the charges were framed only three days ago i.e. on 04.02.2022. He further submitted that there are now two change of circumstances. Firstly, more than six months have elapsed after the framing of the charges on 04.02.2022 but no prosecution witness has been examined. He also submitted that it is a case where the matter pertains to the NDPS Act and the witnesses are official witnesses, who have themselves

put the criminal law into motion by registering the FIR against the petitioner and it was because of the delay on their part that the petitioner had to face incarceration for another six months. Secondly, after the passing of the earlier order, another co-accused, who was also allegedly on the motorcycle, has been granted bail by this Court vide Annexure P-4 on 25.04.2022 and the petitioner is at parity with the aforesaid co-accused. He also submitted that a report was sought from the State to verify as to what was the status of the petitioner pertaining to him being HIV positive.

A reply by way of a short affidavit of Additional Superintendent Central Jail, Patiala has been filed by the learned State counsel, wherein a report of the Medical Officer, Central Jail, Patiala has also been attached, which shows that the petitioner is an HIV patient and in the affidavit, it is also stated that the Jail Authorities are taking good care of him and providing all medical facilities to him.

Learned counsel for the petitioner has further submitted that as per the allegations in the present FIR, there was a recovery of 75 injections of *Buprenorphine* and 75 injections of *Pheniramine maleate* (Avil) from two persons including the petitioner. So far as the injections of *Pheniramine maleate* (Avil) is concerned, the same does not fall within the scope and ambit of NDPS Act and so far as the injections of *Buprenorphine* is concerned, the same are less than 100 doses and in view of the provisions of Rule 66 of the NDPS Rules, 1981 in case the injections are required for medical purposes then the same can be possessed without any medical prescription. He also submitted that the petitioner is suffering from AIDS/HIV infection and the injections of *Buprenorphine* are used for

relieving the pain and even for treatment and his case is, therefore, covered within the parameters of aforesaid Rule. He also relied upon the judgment of “*Sukhwinder Singh @ Vicky Vs. State of Punjab*” 2021(1) RCR (Criminal) 177, in this regard and has submitted that considering the total incarceration of 10 months and 20 days of the petitioner, he may be considered for the grant of regular bail.

On the other hand, Mr. R.S. Thind, learned DAG, Punjab has stated that it is correct that the petitioner is in custody for 10 months and 20 days and the charges were framed on 04.02.2022 but no witness has been examined till date. On a query being asked to learned State counsel as to why for six months, no witness has been examined, he was unable to answer the query raised by the Court. So far as the parity of the petitioner with the other co-accused, namely, Mandeep Singh is concerned, he has stated that although the petitioner is at parity with the aforesaid Mandeep Singh, but the difference was that the petitioner was earlier involved in one more case under the NDPS Act, in which, he has already undergone.

However, learned counsel for the petitioner at this stage had stated that in that case there was an alleged recovery of only 10 ml. of *Codeine* only and that was also used for medical purposes, since the petitioner is suffering from AIDS/HIV infection.

I have heard the learned counsel for the parties.

As per the affidavit filed by the State, the petitioner is a patient of AIDS/HIV. The recovery from the petitioner and the other co-accused was collectively of 75 injections of *Buprenorphine* and the case of the petitioner is that such kind of injections are helpful in relieving the pain

when a patient is suffering from HIV/AIDS. The charges in the present case were framed on 04.02.2022 and no explanation has come forward from the learned State counsel as to why there was a delay on the part of prosecution that no witness has been examined till date. Therefore, the successive bail petition filed by the petitioner would certainly be maintainable. So far as the applicability of Section 37 of the NDPS Act is concerned, although the recovered quantity from two accused was 75 injections/doses of *Buprenorphine* but in view of the facts and circumstances, the case of the petitioner is covered by the judgment of this Court in **Sukhwinder Singh's case (Supra)**, since it has been verified by the State that the petitioner is suffering from AIDS/HIV infection, and therefore, the provisions of bar contained under Section 37 of the NDPS Act will not apply in the present case. Furthermore, it is not the case of the State that in case the petitioner is released on bail then he may abscond or flee from justice or may influence any witness, therefore, considering the aforesaid facts and circumstances of the case, this Court deems it fit and proper to grant bail to the petitioner.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

05.08.2022

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |