

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

CRM-M-21828-2022 (O&M)

Date of decision: 02.08.2022

Israr Hussain

...Petitioner

Versus

Intelligence Officer, Narcotic Control Bureau, Amritsar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vipul Jindal, Advocate
for the petitioner.

Ms. Sharmila Sharma, Sr. Panel Counsel
for the respondent-NCB.

ARVIND SINGH SANGWAN, J. (Oral)

This is the third petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case complaint registered by NCB, Crime No. 29 dated 19.07.2016, under Sections 8, 22, 25, 29 of the NDPS Act, 1985 at NCB, Amritsar.

The first petition, bearing CRM-M-30649-2018, was dismissed as withdrawn on 15.07.2019 and the second petition, bearing CRM-M-7527-2020, was disposed of on 25.09.2020 granting interim bail to the petitioner on medical grounds.

Learned counsel for the petitioner submits that subsequent to grant of interim bail, the petitioner remained under treatment with AIIMS, Rishikesh as well as with one more Govt. Hospital as an outdoor patient as he was to be operate upon. It is further submitted that for a considerable long time, the petitioner remained confined as he tested positive for

COVID-19, as per report of the Community Health Centre, Manglaur, Haridwar and, therefore, could not surrender before the trial Court in time.

Learned counsel further submits that as on today, the petitioner is in judicial custody for the last 03 years and 29 days and he is not involved in any other case. It is further submitted that at the time when the petitioner was granted interim bail on 25.09.2020, he was not involved in any other case and the only objection of the respondent-NCB is that the petitioner has overstayed the interim bail and has surrendered late, for which, the trial was delayed.

Brief facts of the case are that on 19.07.2016, the respondent-NCB received an information that two persons, namely Charanjit Chopra @ Sweetie and Kuldeep Singh @ Mintu, are indulged in trafficking of medicinal drugs like injections containing *Buprenorphine* and are coming in a car bearing registration number PB-29-Q-0410. On receiving such information, the same was reduced into writing and sent to the higher officials and a team was constituted to apprehend the suspects. Later on, the NCB team stopped a car and apprehended Kuldeep Singh @ Mintu and Charanjit Chopra @ Sweetie and recovered 75 boxes containing 1875 injections of *Buprenorphine* and 02 boxes containing 49 injections of *CUPIGESIC-Buprenorphine* injection, which later on, as per FSL report, were found to be prohibited drugs. Later on, on completion of investigation, the accused were sent to judicial custody and they nominated petitioner Israr Hussain, from whom, 200 boxes containing 5000 *Buprenorphine* injections were recovered from his place at Haridwar, Uttarakhand. Thereafter, the disclosure statement of the petitioner, under Section 67 of the NDPS Act, was recorded, in which he admitted the recovery of injections from his

possession.

Learned counsel for the petitioner further submits that the petitioner is in long judicial custody and he is a first offender and it will be a matter of trial whether the provisions of Section 52 of the NDPS Act were properly followed or not. It is further argued that it will also be a matter of trial whether 10 ampules, which were sent to FSL, can be termed as representatives of 5000 ampules.

Learned counsel further submits that when the petitioner was produced before the Judicial Magistrate on 06.08.2016, there is no reference with regard to samples C-2 and D-2 in the order passed by the Judicial Magistrate in compliance of Section 52-A of the NDPS Act.

Learned counsel for the petitioner further submits that a perusal of the FSL report would also show that the samples C-1 and D-1 are silent about the initials of the Judicial Magistrate, though these were produced on 06.08.2021, which again will be a matter of trial whether the same samples were produced before the Judicial Magistrate or not.

Learned counsel for the petitioner further submits that the petitioner is a licenced chemist, holding a licence from 12.05.2014 to 11.05.2019, therefore, the possession of the said injections by the petitioner, whether legal or illegal, is a matter of trial.

Learned counsel for the petitioner further submits that since the petitioner was arrested from Haridwar, again it will be a matter of trial that in the absence of information given to the nearest police station by the arresting officer, there is violation of Section 53 of the NDPS Act.

Learned counsel for the petitioner further argues that as per proceedings under Section 50 of the NDPS Act, the Gazetted Officer Sachin

Gularya, who conducted the search, was a part of the NCB team, therefore, he cannot be termed as an independent Gazetted Officer.

Learned counsel for the petitioner has referred to the statement of PW-2 Ashok Kumar Prajapati, the Investigating Officer, who admitted in his cross examination that Superintendent Sachin Gularya accompanied with him when he left Amritsar for arresting the petitioner and, therefore, it will be a matter of trial whether Section 50 of the NDPS Act was properly complied with or not.

Reply as well as the custody certificate, filed on behalf of the the respondent-NCB, are taken on record. In the reply, the main objection raised is that recovery is of commercial quantity, however, the documents filed by the petitioner (Annexure P-16 Colly.), regarding his treatment from AIIMS, Rishikesh and other hospitals, are not disputed.

Learned counsel for respondent-NCB submits that out of total 11 prosecution witnesses, 03 witnesses have been examined and the trial is delayed due to the petitioner overstaying the interim bail.

In reply, learned counsel for the petitioner submits that two of the co-accused, namely Charanjit Chopra @ Sweetie and Kuldeep Singh @ Mintu, have already been granted the concession of regular bail by this Court, vide orders dated 23.11.2021 and 20.01.2022 passed in CRM-M Nos. 9405 of 2021 and 25554 of 2020, respectively.

After hearing learned counsel for the parties and considering the fact that the custody of the petitioner is more than 03 years; he is not involved in any other case; out of total 11 prosecution witnesses, only 03 witnesses have been examined so far as it is admitted case that the trial was delayed for a considerable long time due to COVID-19 situation and also in

view of the fact that two of the co-accused of the petitioner have already been granted the concession of regular bail as noticed above, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

However, it is made clear that in case the petitioner absents before the trial Court without moving any application before the Court in this regard, his bail/surety bonds shall be cancelled, without any further orders.

02.08.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No