

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

205

CRM-M-24016-2021 (O&M)

Date of Decision: 23.05.2022

KASHISH

... Petitioner

Versus

STATE OF UT, CHANDIGARH

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. G.S. Dhillon, Advocate, Mr. Suvir Sidhu, Advocate &
Mr. Harlove Singh, Advocate for the petitioner.

Mr. Amit Kumar Goyal, Addl. P.P., for U.T., Chandigarh.

VINOD S. BHARDWAJ, J. (ORAL)

CRM-26051-2021

Instant application has been filed under Section 482 of the Cr.P.C. for placing on record the CFSL report dated 18.02.2021, cremation certificate of father of the petitioner and death certificate of mother of the petitioner as Annexures P-3 to P-5 respectively and for exemption from filing the certified copies thereof.

For the reasons mentioned therein, the instant application is allowed as prayed for subject to all just exceptions.

Annexures P-3 to P-5 are ordered to be taken on record. The Registry is directed to tag and page mark the same at appropriate place of the paper book.

MAIN CASE

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case

FIR No.18, dated 05.02.2021 under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sector 17, Chandigarh.

Learned counsel for the petitioner *inter alia* contends that the FIR in the instant case had been registered on the complaint of ASI Avtar Singh, who has alleged in his complaint that on the date of incident, he was on patrolling duty in order to keep a check on the illegal activities with regard to theft and snatching incidents within the area of his jurisdiction. At about 7.00 P.M. he saw clean shaven man wearing a yellow colour hoodie carrying a polythene envelope in his right hand, coming from the side of Section 23-24 lights point towards Sector 23. On seeing the police party, the said person suddenly stopped and started to return 30-35 meters prior to the police party. Getting suspicious about the boy being a thief or a criminal carrying certain stolen article/illegal arms, the boy was overpowered and on checking of the white polythene envelope carried by him, it was found that there was a powder of light brown yellow colour substance. The boy informed the same to be heroin. In addition thereto, 12 injections of Buprenorphine- 2 ml. each and 12 injections of Pheniramine Maleate- 10 ml. each have been found. The batch number and marking were removed on the same with black pen/ink. It was pointed out that the apprehended boy was in the habit of intoxication and in order to fulfill his intoxicant needs, he also used to sell the same to certain other persons. Learned counsel submits that the petitioner has been wrongly charged for the commission of Sections 21 and 22 of the NDPS Act, and apparently he is a consumer of the said contraband. He submits that as per the FSL report, the total weight of the contraband so seized was 5.02 grams alongwith the polythene and that the same is .02 grams above the small

quantity and that in the event the weight of the polythene is segregated, it will be less than the non-commercial quantity. It is also argued that so far as the seized contraband in the form of 12 injections of Pheniramine Maleate of 10 ml. each is concerned, the same is not a psychotropic substance and as such, it would not attract any penal offence under the provisions of the NDPS Act. While referring to the recovery of 12 injections of Buprenorphine - 02 ml. each, it is argued that the provisions of Rule 66 would be operative and that being an addict himself, the same were for his own consumption and not for further sale. He submits that the investigation in the case is complete and there is no disclosure on the basis whereof it can be ascertained that the seized contraband was infact intended to be supplied to some other person for onward sale. It is argued that the circumstances surrounding the recovery clearly show that the petitioner was in a disturbed state of mind. He had lost his mother on 04.10.2020 and he had already lost his father in the year 1999. He was thus orphaned by the death of his mother on 04.10.2020 and the recovery of the contraband follows in close proximity to the death. The petitioner having been apprehended after 05.02.2021, he has been in custody since then and has already undergone actual custody of 01 year 03 months and 16 days. He submits that the petitioner does not suffer from any criminal antecedents and is not involved in any other case.

Per contra, learned State counsel submits that charge in the case has already been framed against the petitioner for commission of offence under Sections 21 and 22 of the NDPS Act and as such, the submission of the petitioner that the recovered contraband was for personal use of the petitioner is misplaced. It is, however, not denied that the petitioner does not suffer from any criminal antecedents and has already undergone an actual custody of 01

year, 03 months and 16 days. It is also not disputed that even though the charge was framed on 01.07.2021, no witness has been examined so far.

Taking into consideration the circumstances noticed above as well as the earlier judgments of this Court passed in **CRM-M-28067 of 2021 dated 02.11.2021 titled 'Sunil Vs. State of Haryana' and the order dated 05.09.2018 passed in CRM-M-20545 of 2018 titled 'Iqbal Singh Vs. State of Haryana'**, I deem it appropriate to allow the instant petition.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

23.05.2022
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No