

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M No.29734 of 2022
Date of Decision: 19.07.2022

Rohit

... Petitioner

Versus

The State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jatin Sharma, Advocate,
for Mr. Abhimanyu Singh, Advocate,
for the petitioner.

Ms. Shivani Sharma. AAG, 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 bearing No.566 dated 22.09.2021, under Sections 22(c), 29 and 61 of Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') (Section 29 NDPS, Act has been added later on), registered at Police Station Mujesar, District Faridabad.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody from 22.09.2021 and the investigation of the case has been completed and now the case is fixed for prosecution evidence. He has submitted that the allegations against the petitioner and co-accused were with regard to total 26 injections of Buprenorphine consisting of 2 ml. each and from the petitioner, there was a recovery of 14 injections of Buprenorphine having 2 ml. each which is slightly higher than the

commercial quantity under the NDPS Act. He submitted that the other co-accused namely, Ashish Aggarwal and Javed Khan have been granted bail by this Court although they were nominated on the basis of disclosure statement. He submitted that the petitioner has been implicated only because earlier he was involved in another case under the NDPS Act. There was an alleged confiscation of Buprenorphine injections from him. He submitted that be that as it may, the offer given to the petitioner under Section 50 of the NDPS Act was totally defective and has referred to Annexure P-1 which is a notice under Section 50 of the NDPS Act and by referring to the same, he submitted that the offer was given by ASI that the petitioner may get himself searched either from the aforesaid police officer or by some Gazetted Officer. He submitted that on the face of it, the offer given was in violation of Section 50 of the NDPS Act since as per the mandatory provision of Section 50 of the NDPS Act, the offer has to be given for getting searched either from the Gazetted Officer or from the Magistrate and, therefore, the entire prosecution case gets vitiated only on this ground since the provisions of Section 50 of the NDPS Act are mandatory in nature and in view of the aforesaid position, the provisions of Section 37 of the NDPS Act would not apply to the present case.

On the other hand, learned State counsel has submitted that the petitioner is in custody from 22.09.2021. She has however stated that the confiscated quantity from the petitioner was 14 injections of Buprenorphine which is 28 ml. and the commercial quantity is 20 ml. and, therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner was apprehended along with 14 injections of Buprenorphine with 2 ml. each. Another set of 12 injections were apprehended from the other co-accused. The petitioner is in custody from 22.09.2021 and the investigation of the case has been completed. The effect of Section 37 of the NDPS Act is required to be seen although the confiscated quantity from the petitioner and co-accused was marginally higher than the commercial quantity. A perusal of Annexure P-1 which is a notice under Section 50 of the NDPS Act shows that the police official has given offer to the petitioner that as to whether he wants to get search conducted by him or any other Gazetted Officer. Ex facie the offer is defective. Since as per the provisions of Section 50 of the NDPS Act, the offer has to be given for getting searched either from the Gazetted Officer or from Magistrate. The provisions of Section 50 of the NDPS Act are mandatory in nature and, therefore, prima facie, this Court is of the view that in view of the aforesaid violation of Section 50 of the NDPS Act, this Court has reasons to believe that the petitioner is not guilty of offence at least at this stage. Furthermore, it is not the case of the State that in case, the petitioner is released on bail he may repeat the offence or may abscond from justice and, therefore, the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is also fulfilled. Therefore, this Court is of the view that at least at this stage, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds/surety bonds to the satisfaction of the concerned Chief Judicial Magistrate/Trial Court/Duty

Magistrate.

However, anything observed herein above shall have no effect on the merits of the case and is meant for deciding the present petition only.

19.07.2022
manju

(JASGURPREET SINGH PURI)
JUDGE

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