

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CRM-M-29362-2022

Date of Decision :15.07.2022

Kamalpreet Singh @ Kamal

...Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Choudhary, Advocate for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No.72 dated 03.11.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act, 1985') at Police Station City Balachaur, District SBS Nagar.

Learned counsel for the petitioner argues that in the present case, the substance which has been recovered from the petitioner is 50 injections of Buprenorphine, which drug though, mentioned as banned drug under the NDPS Act, 1985 but, a reference is pending with respect to it before the Division Bench of this Court with regard to inclusion of the said drug in the NDPS Act, 1985. Learned counsel for the petitioner submits that keeping in view the fact that a reference is pending before the Division Bench of this Court, the petitioner may kindly be granted concession of

interim bail till the reference is decided.

Learned counsel for the petitioner further argues that in the site plan, the Arresting Officer has not described/drawn the bushes, which itself is a ground to grant the concession of regular bail to the petitioner.

Learned State counsel submits that Buprenorphine is a banned substance, which has been duly notified by the competent authority in the schedule notified under the NDPS Act, 1985 and above 20 grams of the said drug is a commercial quantity, whereas, from the petitioner, 100 grams of the said drug has been recovered. Learned State counsel further submits that the drug, which has been recovered from the petitioner has been mentioned at Sr. No.92 of the Schedule published under the NDPS Act, 1985, therefore, the petitioner cannot claim any concession merely on the ground that a reference is pending before the Division Bench of this Court as to whether the inclusion of the said drug in the Schedule appended to NDPS Act, 1985 is correct or not.

As far as the contention of the learned counsel for the petitioner that site plan does not describe bushes, learned State counsel submits that the site plan is clear as to from where the drug was recovered and it was not necessary to draw bushes with pen in the site plan so as to satisfy the petitioner

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, a drug which has been defined in the Schedule attached under the NDPS Act, 1985 as a banned drug and the said drug, which is a banned drug as of today and has been recovered from the petitioner in a commercial quantity, rigors of Section 37 of the NDPS Act, 1985 applies.

Learned counsel for the petitioner also concedes that as of now the drug recovered from the petitioner is a banned drug as per NDPS Act, 1985.

The argument of the learned counsel for the petitioner that a reference is pending before the Division Bench of this Court as to whether the said drug needs to be included in Schedule attached to NDPS Act, 1985 or not, cannot come to the rescue of the petitioner at this stage or till the competent Court of law comes to the conclusion that the said drug needs to be taken out of the Schedule prescribed under NDPS Act, 1985 on any valid grounds.

With regard to the prayer of the petitioner that the site plan is not clear, the said argument cannot be accepted at this stage as the site plan is a subject matter of evidence, which will come on record during the course of trial. Merely on the ground that the Arresting Officer has not drawn the bushes with pen in the site plan, when the exact place of recovery has been shown in the site plan therefore, a grievance cannot be raised by the petitioner qua the same, especially, when learned counsel for the petitioner has not been able to rebut the factual aspect that the site from where the contraband was recovered after the same was thrown by him upon noticing the police, is correctly described.

Keeping view the facts recorded hereinabove, no ground is made out to allow the prayer of the petitioner for the grant of regular bail.

Dismissed.

July 15, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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