

CRM-M-33847-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33847-2022

Date of decision: 23.11.2022

Mohit Chaudhary

...Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sunil Sihag, Advocate and
Mr. Satyawar Singh Nain, Advocate,
for the petitioner.

Mr. Pawan Kumar Jhanda, AAG Haryana

HARNARESH SINGH GILL, J. (ORAL)

Through this petition, the petitioner seeks regular bail in case FIR No. 349 dated 20.06.2022, registered at Police Station City Sohna, District Gurugram, under Sections 22-C and 29 NDPS Act, 1985.

Learned counsel for the petitioner contends that as per the prosecution version, recovery of 15 injections of Buprenorphine (Leegesic) 2 ML was effected from co-accused, Mahesh @ Manish; that the petitioner has been indicted on the disclosure statement of the co-accused, and that allegation against the petitioner is that he had supplied the intoxicating injections to the co-accused.

Learned counsel further contends that no recovery of intoxicating injections had been effected from the petitioner. Moreover so far as the alleged recovery of 15 injections of Buprenorphine (Leegesic) 2 ML, is concerned, the same would not constitute an offence as the same can be used for personal use. Learned counsel while relying upon Rule 66

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of the NDPS Rules, contends that possession of less than 100 units of Buprenorphine (Leegestic) would not be considered as an offence in case the same is required for medicinal use. The petitioner has been in custody since 23.06.2022. In support of his contentions, learned counsel relies upon the judgment rendered by a Coordinate Bench in Sukhwinder Singh @ Vicky Vs. State of Punjab, 2021(1) R.C.R. (Criminal) 177.

On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that during investigation, co-accused, Mahesh alias Manish suffered the disclosure statement that he had purchased the intoxicating injections from the petitioner, and that it was also found that the co-accused had transferred Rs.50,000/- in the account of the petitioner.

I have heard the learned counsel for the parties.

The provisions of Rule 66 of the NDPS Rules as substituted vide Notification No. G.S.R.224(E) dated 25.3.2015 (w.e.f. 25.3.2015) are reproduced as under:-

“66. Possession, etc., of psychotropic substances.-

3[(1) No person shall possess : Any psychotropic substance for any of the purposes covered under 1945 rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these rules:

Provided that possession of a psychotropic substance specified in Schedule I shall be only for the purposes mentioned in chapter VIIA.I

(2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not

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authorized to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorized under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said institution or, as the case may be, the said hospital or dispensary or person.

Provided that where such Psychotropic Substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time:

Provided further that an individual may possess the quantity of exceeding one hundred dosage units at a time [but not exceeding- three hundred dosage units at a time] for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.”

The petitioner has been in custody since 23.06.2022. There is no other case registered or pending against the petitioner. It is the specific case of the petitioner that no recovery of intoxicating injections had been effected from him. As per the case of prosecution, recovery of 15 injections of Buprenorphine (Leegestic) 2 ML, had been effected from the co-accused. Rule 66 of the NDPS Rules provides that 100 doses of such injections can be retained by a person. The statutory provision is presumed to be valid unless the same is struck down by a competent court of law.

In Sukhwinder Singh @ Vicky's case (supra), the Coordinate

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Bench has held as under:

“It is not the case of the State that in case the bail is granted to the petitioner then there is likelihood of his tampering with the evidence or influencing of the witnesses nor the same has been pleaded by the learned State counsel. So far as the condition of existence of any reasonable ground for believing that he is not guilty of such an offence is concerned, considering the provisions of Rule 66 of NDPS Rules and aforementioned judgments the petitioner having committed an offence under Section 22 of the NDPS Act would be a debatable issue as it is also subject to fulfillment of ingredients of first proviso to Rule 66(2) of NDPS Rules. In case Rule 66(2) of NDPS Rules is applied in the present case then the same would be a reasonable ground and something more than prima facie ground to believe at this stage that the petitioner is not guilty of the alleged offence. Apart from this, the fact that the petitioner is in custody for more than two years and is not involved in any other case at present is also a relevant factor. The aforesaid observations are only for the purpose of deciding the present bail application and would not in any way reflect any observation on the merits of the case.

Considering the provisions of Rule 66 of the NDPS Rules and the aforesaid observations made by the Coordinate Bench, this Court finds that there is a reasonable ground and something more than *prima facie* to believe, at this stage, that the petitioner is not guilty of the alleged offence.

In view of the above, without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial

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Court/Duty Magistrate.

The aforesaid observations are only for the purpose of deciding the present bail application and would not in any way reflect any observations on the merits of the case.

23.11.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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