

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

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CRM-M-34791-2022  
Date of decision : 16.08.2022

Subhash @ Bhopa

... Petitioner

Versus

The State of Haryana

... Respondent

***CORAM: HON'BLE MR.JUSTICE VIKAS BAHL***

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

Mr.Munish Sharma, AAG, Haryana.

**VIKAS BAHL, J.(ORAL)**

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.256 dated 07.05.2022 registered under Sections 22(b), 61-85 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short "NDPS Act") at Police Station Mujesar, District Faridabad.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been in custody since 08.05.2022 and the investigation is complete and the challan has been presented and there are 16 witnesses and charges have not been framed and thus, the trial is likely to take time. It is further submitted that the petitioner is not involved in any other case. It is stated that the alleged recovery from the petitioner is of 9 injections, which falls under the ambit of non-commercial quantity and thus, the bar under Section 37 of the NDPS Act is not attracted. It is also

stated that in the present case there is non compliance of Section 50 of the NDPS Act and has referred to the recovery memo dated 07.05.2022 to show that the option which had been given to the petitioner under Section 50 of the NDPS Act by the Investigating Officer was to get searched by him or by any gazetted officer and there was no option given of being searched by the Magistrate and it is submitted that the same amounts to non compliance of Section 50 of the NDPS Act.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that in the present case, 4 injections (2 ml) each containing the salt buprenourphine and 5 injections (1 ml) each containing the salt Pentazocine, i.e., total 9 injections have been recovered from the petitioners. It is, however, not disputed that the said recovery would fall within the ambit of non commercial quantity even if both the said recoveries are clubbed together.

This Court has heard learned counsel for the parties and has perused the paper book.

The petitioner has been in custody since 08.05.2022 and the investigation in the present case is complete and there are 16 witnesses and since the charges are not framed, thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. The alleged recovery effected from the present petitioner is of non commercial quantity. The question whether Section 50 of the NDPS Act has been complied with or not, would be finally adjudicated during the course of trial.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned

trial Court/ Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)  
JUDGE

August 16, 2022  
*Davinder Kumar*

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|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether reportable          | Yes/No |