

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

CRM-M-37908-2022

Date of Decision : 30.08.2022

Kuldeep

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Vipul Sharma, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, 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 bearing FIR No.28 dated 23.01.2021, under Sections 18-A, 18(C), 27 & 28 of Drugs & Cosmetics Act, 1940 & 22 (C) & 61 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'the Act'), registered at Police Station Faridabad Old, District Faridabad, Haryana.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 23.01.2021 which is almost 01 year and 07 months and the investigation of the case has been completed. He submitted that the petitioner is not involved in any other case and he has got clean antecedents.

Learned counsel for the petitioner has pointed out that the

present case has been planted upon the petitioner and he has been shown to have possessed 70 injections of Buprenorphine alongwith some injections of Avil. So far as the injections of Avil are concerned, the same are not covered within the ambit of the Act and so far as the 70 injections of Buprenorphine is concerned, the same were planted upon the petitioner. It is submitted that even otherwise also the mandatory provisions of Section 50 of the Act were not complied with. He referred to the FIR itself wherein it is stated that the offer which was given as to whether the petitioner wishes to get himself searched either from the Magistrate or from some higher police officer is contrary to the mandatory provisions of Section 50 of the Act. He submitted that violation of Section 50 of the Act rather vitiates the entire trial and, therefore, the bar contained under Section 37 of the Act will not apply in the present case.

Learned State counsel has submitted that it is correct that the petitioner is in custody for more than 01 year and 07 months and while perusing the FIR itself, it is clear from the FIR that offer was given for being searched either from a Magistrate or from a higher police officer whereas as per the provisions of Section 50 of the Act it has to be given an offer of being searched either from the Magistrate or a Gazetted Officer.

I have heard learned counsel for the parties.

The petitioner is in custody from 23.01.2021. Perusal of the FIR would show that apparently, the offer was defective and the mandatory

provisions of Section 50 of the Act have not been complied with. The petitioner is not involved in any other case as per the learned counsel for the parties.

In view of the aforesaid position, the bar contained under Section 37 of the Act will not apply in the present case because this Court is prima facie satisfied that there are reasons to believe that the petitioner is not guilty of offence since there appears to be a violation of provisions of Section 50 of the Act. Apart from the same, the petitioner is not involved in any other case and it is not the apprehension of the learned State counsel that in case the petitioner is released on bail then he may repeat the offence. Therefore, both the ingredients for making a departure from Section 37 of the Act remain satisfied.

In view of the aforesaid position, this Court deems it fit and proper to grant the regular bail 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.

(JASGURPREET SINGH PURI)
JUDGE

30.08.2022
mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No