

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

223

CRM-M-48210-2022(O&M)
Date of Decision : **October 21, 2022**

TARUN@KALU

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Balvinder Sangwan, Advocate
for the petitioner.

Mr. Surinder Kumar Dagar, 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 FIR No.333 dated 2.6.2021 under Sections 22(c) and 29 NDPS Act, Section 188 of the IPC, Section 51 of the Disaster Management Act, 2005 and Sections 27(B)(II) and 28 of the Drugs and Cosmetics Act, 1940, registered at Police Station Mujessar, Faridabad.

Learned counsel for the petitioner has submitted that the petitioner is in custody for 1 year and 4 months and it is a case where the petitioner has been falsely implicated at the hands of the police because of some old enmity with the police officer because he was earlier involved in three more cases. He has submitted that the allegations against the petitioner were that on the basis of the secret information, the police had apprehended the petitioner with 12 injections of Buprenorphine and 12 injections of AVIL. He further submitted that so

far as the 12 injections of AVIL are concerned, the same are not covered under the provisions of the NDPS Act and so far as the 12 injections of Buprenorphine are concerned, the same although falls in the category of commercial quantity but the quantity is marginally high and the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the fact that the offer which was given under Section 50 of the NDPS Act was totally defective offer and a third option was also given by the concerned officer. He has during the course of arguments supplied a vernacular copy of notice under Section 50 of the NDPS Act and which is hereby taken on record as Mark-X and while referring to the aforesaid notice under Section 50 of the NDPS Act he submitted that when an offer was given it was stated that whether he wanted to get himself searched either by ASI himself or any Gazetted Officer or a Magistrate. He submitted that on the face of it the offer was defective and not only the recovery but also the trial will get vitiated since the provision of Section 50 of NDPS Act which are mandatory has not been complied with and, therefore, the bar contained under Section 37 of the NDPS Act will not apply in the present case. He further submitted that so far as the quantity of 12 injections of Buprenorphine is concerned, the same are less than 100 doses as specified under Rule 66 of the NDPS Rules and, therefore, on that account as well the case of the petitioner would be covered by the ratio of judgment of this Court in **Sukhwinder @ Vicky Vs. State of Punjab, 2021(1) R.C.R.(CrI.) 177**. He has, therefore, prayed for the grant of regular bail.

On the other hand, the learned State counsel has submitted

that it is correct that the petitioner is in custody since one year and four months and there had been recovery of 12 injections of Buprenorphine containing 2 mls each i.e. total 24 mls. The learned State counsel could not dispute with regard to the third option given to the petitioner i.e. by the ASI as to whether the petitioner wants to get searched by him or by the Gazetted Officer or a Magistrate. The learned State counsel has, however, opposed the grant of regular bail on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act and also that the petitioner is involved in three more cases.

I have heard the learned counsels for the parties.

The petitioner has faced incarceration for 1 year and 4 months. So far as the injections of Avil are concerned, the same are not covered under the provisions of the NDPS Act. So far as the injections of Buprenorphine are concerned, although the quantity falls within the category of commercial which is marginally high than the prescribed quantity but considering the aforesaid facts and circumstances whereby it appears prima facie that the offer which was given to the petitioner under Section 50 of NDPS Act for getting searched in the presence of Gazetted Officer or a Magistrate or by him appears to be defective since the third option has also been given. A perusal of the vernacular copy of the notice under Section 50 of NDPS Act which has been supplied by the learned counsel for the petitioner in the Court would show that it was so stated by the police official that whether the petitioner wanted to get himself searched from ASI himself or a Gazetted Officer or a Magistrate. Therefore, considering the aforesaid facts and circumstances, this Court

is of the view that there are prima facie reasons to believe atleast at this stage that the petitioner is not guilty of the offence since the compliance of Section 50 of NDPS Act prima facie was not made. Apart from the above it is not the case of the State that in case the petitioner is released on bail then he may influence any witness or may repeat the offence. This Court does not wish to make any observation on the merits of the case but purely for the puprose of considering the application for bail, the aforesaid facts and circumstances, the bar contained under Section 37 of NDPS will not apply to the petitioner.

Therefore, considering the totality of the circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner.

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

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

(JASGURPREET SINGH PURI)
JUDGE

October 21, 2022

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No