

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

289

CRM-M-6196-2023 (O&M)
Date of decision: 17.08.2023

Harmadan Gopal

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sahil Puri, Advocate for the petitioner

Mr. Aditya Kapoor, AAG Punjab

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in case FIR No.31 dated 26.01.2020, registered under Sections 22, 29, 61 and 85 of NDPS Act, 1985 at Police Station City Phagwara, District Kapurthala.

2. Learned counsel contends that the petitioner is in custody for about 1 year. The alleged recovery from the co-accused was of 23 injections of Buprenorphine Hydrochloride. The petitioner as well as co-accused Jatinder Kumar were granted interim bail, as the FSL had not been received by the investigating agency, whereafter, the petitioner surrendered on 03.11.2023, on which date his anticipatory bail application was declined, however, the bail of co-accused Jatinder Kumar was allowed on the ground that there was no recovery effected from him (Annexure P-4 and P-5). No independent witness was joined and there is no evidence to connect him with the recovery. While making a

reference to Rule 66 of the NDPS Rules, contention is raised that possession of less than 100 units of Buprenorphine Rexogesic, cannot be considered an offence as per the Division Bench judgment of this Court in **Saleem Mohd. vs. State of Punjab**; 2015(25) R.C.R. (Criminal), wherein regular bail was granted to the accused. Challan in this case was presented on 30.09.2020, however, the charges are yet to be framed; in all there are 9 prosecution witnesses. The petitioner is not involved in any other case.

3. Status report by way of affidavit of Jaspreet Singh, PPS, Deputy Superintendent of Police, Sub-Division, Phagwara has been filed by learned State counsel. The same is taken on record. He opposes the bail on the ground that the petitioner was apprehended at the spot and the commercial quantity of contraband has been recovered from him. He is however unable to controvert the submissions with regard to custody, stage of the case, co-accused having been granted bail and the petitioner is not involved in any other case.

5. Heard.

6. This Court granted bail in **Sukhwinder Singh @ Vicky vs. State of Punjab**, 2021 (1) RCR (Criminal) 177, a case wherein the recovery was of 70 injections of Pheniramine Maleate 10 ml Avil and 70 injections of Buprenorphine Rexogesic 2 ml each; in **Kulwinder Singh vs. State of Punjab**, CRM-M-45757-2022 dated 02.08.2022, 70 injections of Buprenorphine and 70 of Avil were recovered with custody of 1 year and 2 months and not involved in any case under NDPS Act; in **Mukesh @ Rahul vs. State of Punjab**, CRM-M-10379-2023 dated 18.07.2023, 60, injections of Buprenorphine were recovered and the petitioner was in custody for 1 year.

7. Hon'ble The Supreme Court of India in the case of **Dheeraj Kumar Shukla vs. The State of Uttar Pradesh**, SLP (Criminal) No.6690/2022 decided on 25.01.2023 observed that in a case of long custody period, involving quantity recovered to be of commercial nature, where the trial is yet to commence, though charges had been framed, the condition of Section 37 of NDPS Act can be dispensed with. In the case of **Bhupender Singh vs. Narcotic Control Bureau** (2022) 2 RCR (CrI.) 706, the Division Bench of this Court observed with regard to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and rigors of Section 37 of NDPS Act. In the case of **Munasi Masih vs. State of Punjab**, CRM-M-31504-2022, decided on 06.02.2023, this Court granted bail to a first offender from whom commercial quantity of contraband had been recovered and only 2 out of 13 PWs have been examined, by observing that in view of delayed trial, the rigors of Section 37 of NDPS Act can be diluted to an extent and the petitioner can be granted bail, keeping in mind the right to a speedy trial as envisaged under Article 21 of the Constitution of India.

8. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for about 1 year; not involved in any other case; co-accused having been granted bail; though challan stands presented on 30.09.2020, however, charges are yet to be framed; in all there are 9 prosecution witnesses, the trial is likely to take a considerable time, thus further incarceration of the petitioner would be violative of his right enshrined under Article 21 of the Constitution of India and the rigors of Section 37 of NDPS Act can be diluted bearing in mind the right to a speedy trial, thus, the present petition for grant of

regular bail deserves to be allowed.

9. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to his not being required in any other case. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/ intimidate the prosecution witnesses.
- (iii) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
- (v) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- (vi) The petitioner shall not in any manner misuse his liberty.
- (vii) The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
- (viii) The petitioner shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.

10. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

11. In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

August 17, 2023
M.Kamra

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