

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-42474-2022 (O&M)

Date of Decision: 26.5.2023

Yakoob

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. R.P.Dhir, Advocate with
Ms. Simsi Dhir Malhotra, Advocate,
for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab

KARAMJIT SINGH, J. (Oral)

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.112 dated 15.6.2022 registered for the offences punishable under Sections 22, 29 of NDPS Act at Police Station Mahilpur, District Hoshiarpur.

2. The allegations in nutshell are that the police apprehended co-accused Hussain and 50 injections of Buprenorphine and 50 injections of Avil were recovered from his possession and name of the petitioner surfaced in the disclosure statement made by said Hussain and resultantly, the petitioner was arrested on 25.7.2022 and 5 injections of Buprenorphine were recovered from his possession.

3. Counsel for the petitioner *inter alia* contends that the petitioner who was not named in the FIR was later on, falsely implicated in the present

case on the basis of the alleged disclosure made by co-accused Hussain. It is further contended that admissibility and veracity of the said disclosure statement will be tested during trial. Further alleged recovery of 5 injections of Buprenorphine from the petitioner comes under non-commercial quantity and the petitioner is already incarcerated for the last more than 10 months and is not involved in any other case under NDPS Act and that the trial is not proceeding ahead. So, prayer is made that the petitioner be released on regular bail.

4. Present petition is resisted by the State counsel who on instructions from ASI Manjit Singh submits that commercial quantity of medical intoxicants were recovered from co-accused Hussain who was arrested by the police on 15.6.2022 and name of the petitioner surfaced in the disclosure statement made by co-accused and then the petitioner was arrested and non-commercial quantity of medical intoxicants i.e. 5 injections of Buprenorphine were recovered from possession of the petitioner. State counsel has not disputed the fact that the petitioner is in custody for the last more than 10 months and is having no criminal history under NDPS Act and that till date, no prosecution witness has been examined.

5. I have considered the submissions made by the counsel for the parties.

6. Admittedly, the petitioner was not named in the FIR and impleaded as accused on the basis of the disclosure statement made by co-accused Hussain from whom commercial quantity of contraband i.e. 50 injections of Buprenorphine were recovered by the police. As per prosecution version, 5 injections of Buprenorphine which comes under non-

commercial quantity were recovered from possession of the petitioner who is having no criminal antecedents as far as NDPS Act is concerned. Admittedly, the petitioner is in custody for the last more than 10 months and the trial is not proceeding ahead as till date, the prosecution failed to examine any witness out of total 14 witnesses. So, it will take considerable time for conclusion of trial. As recovery effected from the petitioner comes under non-commercial quantity, rigors of Section 37 of NDPS Act are not applicable to the said recovery. In the given circumstances, no useful purpose is going to be served by keeping the petitioner in custody for any further period.

7. In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

May 26, 2023
Paritosh Kumar

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