

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

214

CRM-M-43043-2022(O&M)
Date of decision: 10.08.2023

Bablu

...Petitioner

Versus

UT Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms. Meghna Nehra, Advocate for
Mr. Rahil Mahajan, Advocate for the petitioner.

Mr. Shashank Bhandari, Addl. PP, UT Chandigarh.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.67 dated 23.06.2022, registered under Section 22 of NDPS Act, at Police Station West Sector 11, Chandigarh.
2. Learned counsel contends that the petitioner is in custody for 1 year and about 2 months. Allegedly 15 injections of Buprenorphine were recovered from the petitioner. While making a reference to Rule 66 of the NDPS Rules it is contended 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. Reliance is placed on CRM-M-45757-2022, **Kulwinder Singh vs. State of Punjab**, vide order dated 02.08.2022 and **Mukesh @ Rahul vs. State of Punjab**, CRM-M-10379-2023. No independent witness has been joined at the time of recovery. The petitioner is not involved in

any other case under the NDPS Act. Charges were framed on 03.12.2022 and only 6 out of 13 witnesses have been examined.

3. Learned counsel for UT Chandigarh opposes the bail on the ground the petitioner was apprehended at the spot and commercial quantity of contraband was recovered from him. He is however unable to controvert the submissions made regarding the custody, stage of the case and petitioner being not involved in any other case under the NDPS Act.

4. Heard.

5. 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, a Coordinate Bench granted regular bail, relying on which, a Coordinate Bench in CRM-M-45757-2022, **Kulwinder Singh vs. State of Punjab**, vide order dated 02.08.2022, wherein recovery of 70 injections of Buprenorphine and 70 of Avil was effected, the accused was granted bail after having been in custody for 1 year and 2 months and was not involved in any case under NDPS Act. In **Mukesh @ Rahul vs. State of Punjab**, CRM-M-10379-2023, the alleged recovery was of 60 injections of Buprenorphine and the petitioner was in custody for 1 year, bail was granted by a Coordinate Bench vide order dated 18.07.2023.

6. Hon'ble The Supreme Court 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 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 (CrL.) 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 Article 21 of the Constitution of India.

7. Considering the aforesaid orders and facts of the case, in particular that the petitioner is in custody for the last 1 year and about 2 months; not involved in any other case under NDPS Act; charges were framed on 03.12.2022 and out of 13 witnesses, only 6 have yet been examined; 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.

8. 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.

9. 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.

10. 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

10.08.2023
ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No