

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45757-2022 (O&M)
Date of Decision: 02.08.2023

(I)
Kulwinder Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-8452-2023(O&M)

(II)
Gurnek Singh @ Gagni

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Keshav Pratap Singh, Advocate,
for the petitioner in CRM-M-45757-2022.

Mr. T.P. Singh, Advocate,
for the petitioner in CRM-M-8452-2023.

Mr. Harsimar Singh Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties since both petitions arise out of the same FIR and the prayer in both the cases is for the grant of regular bail.

2. Both the petitions have been filed under Section 439 of the

Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No. 42 dated 14.05.2022, under Sections 22/29 of NDPS Act, registered at Police Station Kathgarh, District S.B.S Nagar.

3. Learned counsels for the petitioners have submitted that the petitioners are in custody from 14.05.2022 which is more than 1 year and 2 months and only one prosecution witness has been examined till date. They further submitted that so far as petitioner Kulwinder Singh is concerned, he is not involved in any other case under the NDPS Act but he is involved in 1 more case under the provisions of IPC and so far as petitioner **Gurnek Singh @ Gagni** is concerned, he is also not involved in any other case under the NDPS Act but he is involved in 4 more cases under the provisions of IPC. They further submitted that it is a case where as per the prosecution story both the petitioners were coming on a motorcycle and they were carrying a bag which contained 70 injections of Buprenorphine consisting 2 ml each and 70 injections of Avil which was allegedly confiscated by the police. They submitted that so far as the injections of Avil are concerned, the same does not fall within the domain of the NDPS Act and so far as the injections of Buprenorphine are concerned, the total alleged recovery from two petitioners was 70 injections of Buprenorphine consisting of 2 ml each. They submitted that the aforesaid number of doses was less than 100 and it was required for the purpose of medical use and has also referred to Rule 66 of the NDPS Rules in this regard. They have also referred to a judgment passed by this Court in ***Sukhwinder Singh @ Vicky Versus State of Punjab, 2021 (1) RCR (Criminal) 177*** and submitted that the case of the petitioners is squarely covered by the aforesaid judgment wherein it was

held that when the doses was less than 100, then Rule 66 will apply and in the absence of any other adverse circumstances, in case the accused are able to show medical need then by virtue of Rule 66 of the NDPS Rules no offence is made out. They submitted that so far as the fact as to whether it was required for medical purpose or not, the same can be only adduced at the time of evidence and for the purpose of considering the grant of bail, the petitioners may be considered for the grant of regular bail and also considering the fact that now custody of the petitioners is more than 1 year and 2 months.

4. On the other hand, Mr. Harsimar Singh Sitta, DAG, Punjab has submitted that so far as the custody of the petitioners is concerned, the same is correct. He further submitted that so far as petitioner Kulwinder Singh is concerned, he is not involved in any other case under the NDPS Act but he is involved in 1 more case under the provisions of the IPC and so far as petitioner [Gurnek Singh @ Gagni](#) is concerned, he is also not involved in any other case under the NDPS Act but he is involved in 4 more cases under the provisions of IPC. He submitted that so far as the injections of Avil are concerned, they do not fall within the domain of the NDPS Act but 70 injections of Buprenorphine were confiscated by the police from both the petitioners and therefore, the petitioners are not entitled for the grant of regular bail.

7. I have heard the learned counsel for the parties.

8. It is a case where both the petitioners have faced incarceration for 1 year and 2 months and only one prosecution witness has been examined till date as per the learned counsel for the parties. They are stated to be not involved in any other case under the NDPS Act but in some cases under the

IPC. This Court in *Sukhwinder Singh @ Vicky Versus State of Punjab (Supra)* dealt with this issue that when a person is found in possession of doses which are less than 100, then in view of Rule 66 of the NDPS Rules, they can be considered for the grant of regular bail unless there are some other adverse circumstances against accused persons. In the present case the total doses of Buprenorphine was less than 100. Even otherwise also it is not the case of the learned State counsel that in case the petitioners are released on bail, then they may influence any witness or may tamper with evidence or may flee from justice and therefore, considering the aforesaid totality and circumstances of the present case especially considering custody of the petitioners and also considering the ratio of the aforesaid judgment in *Sukhwinder Singh @ Vicky Versus State of Punjab (Supra)*, this Court deems it fit and proper to grant regular bail to the petitioners since the bar contained under Section 37 of the NDPS Act will not apply to both the petitioners.

9. In view of the above, both the petitions are allowed. Both the petitioners shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

10. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petitions only.

02.08.2023
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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