

CRM-M-49578-2023 (O&M) 1

208 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-49578-2023 (O&M)

Date of Decision: 06.12.2023

NARINDER BHARDWAJ

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amit Gupta, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the 2nd petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 67 dated 21.04.2022 registered under Sections 22 of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') (Section 29 of NDPS Act added later on) at Police Station Lalru, District S.A.S. Nagar.

2. Present FIR was lodged on the basis of statement of SI Mandeep Singh on the allegations that the police officials were present near T-point Lehli for checking of vehicles coming from both side of the road. At about 1.30 PM, one bus of Haryana Roadways came from Ambala side and was stopped. One young boy sitting in the bus was found carrying a plastic bag in his hand and on seeing the police party he tried to flee from the spot. On asking of the police, he was apprehended on suspicion and he disclosed his name as Shahnwaj. On conducting a search of the plastic bag carried by him, 75 injections of Buprenorphine IP Bupine were recovered. During investigation the accused Shahnwaj made a disclosure statement and the present petitioner was arrested vide DDR No. 16 dated 25.04.2022 as Section 29 of NDPS Act was added to

the present case. Allegedly, five injections of Buprenorphine IP Bupine

and 05 vials of Pheniramine Meleate were recovered from the possession of the petitioner.

3. Learned counsel for the petitioner inter alia contend that the petitioner is not named in the FIR and he has been falsely implicated in the present case on the basis of disclosure statement made by the co-accused while he was in police custody, which is not admissible as it is hit by Section 26 of the Indian Evidence Act. The petitioner has already suffered incarceration for a period of more than 10 months and has remained in custody for over 06 months after withdrawal of his application for regular bail on 22.05.2023. Learned counsel further contends that the alleged recovery planted upon the petitioner is '5' injections of Buprenorphine IP Bupine and 5 vials of Pheniramine Meleate IP Avil, which falls under the category of non-commercial quantity of the alleged substance. Further, Pheniramine Meleate IP Avil recovered from the possession of the petitioner does not come under the schedule of NDPS Act. The other alleged recovery of 05 injections of Buprenorphine IP Bupine from the petitioner is also non-commercial in nature and as per the proviso attached with Section 66 of NDPS Rules 1985, it is permissible to possess 100 doses of the above substances for personal medical use.

4. Learned counsel for the petitioner has further relied upon judgment of this Court passed in **CRM-M-13312-2020** decided on **10.11.2020** titled as **Sukhwinder Singh @ Vicky Vs. State of Punjab**, **CRM-M-22534-2020** decided on **28.09.2021** titled as **Roopa Vs. Union Territory, Chandigarh**, **CRM-M-3155-2020** decided on **08.10.2021** titled as **Mukesh Kumar @ Kaka Vs. State of Punjab**, **CRM-M-**

52001 of 2021 decided on 03.02.2022 titled as **Rohit Kumar Vs. State of Punjab**, CRM-M-36753 of 2019 decided on 13.01.2020 titled as **Aruna @ Runa Vs. State of U.T. Chandigarh**, CRM-M-3328 of 2019 decided on 14.02.2019 titled as **Nishant Jain Vs. Union Territory of Chandigarh** and CRM-M-51013-2021 decided on 10.12.2021 titled as **Roopa Rani Vs. State of Punjab** wherein under similar circumstances, this Court has granted bail to the accused persons on the ground that the substances allegedly recovered from the accused does not fall under the ambit of NDPS Act.

4. Per contra, the learned State counsel has filed the short reply dated 05.12.2023 by way of affidavit of Dr. Darpan Ahluwalia, IPS, Assistant Superintendent of Police, Sub-Division Dera Bassi, District SAS Nagar and opposes the prayer for grant of bail to the petitioner on the ground that petitioner did not have any valid license for possession of the alleged contraband at the time of alleged recovery for him to take benefit of the proviso attached to Section 66 of NDPS Rules 1985.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that the petitioner is behind the bars for about 10 months as on 05.12.2023. The Investigating Agency has already completed the investigation and filed the final report under Section 173 of Cr.P.C. on 17.03.2023. The trial of the case has not made much progress as none, out of the 15 prosecution witnesses have been examined so far. Further, the petitioner is not involved in any other case. Culpability, if any, would be determined at the time of trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

6. In view of the above, petitioner Narinder Bhardwaj is ordered to released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

8. The petition is allowed.

(HARPREET SINGH BRAR)
JUDGE

06.12.2023
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No