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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-56755-2023

Date of Decision: 16.11.2023

Yakoob

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sumit Dua, Advocate
for the petitioner.

Mr. G.S. Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.92 dated 10.12.2020, under Section 22 of the NDPS Act, 1985, registered at Police Station Bholath, District Kapurthala.

2. It has been submitted by learned counsel for the petitioner that petitioner is in custody for 8 months and 12 days and it is a case where the allegations against the petitioner are with regard to recovery of recovery of 25 injections of *Buprenorphine* and some injections of Avil. He also submitted that so far as the injections of Avil is concerned, the same does not fall within the purview of NDPS Act and so far as the *Buprenorphine* is concerned, the alleged confiscated quantity was 25 injections of *Buprenorphine* containing 2 ml. each, which although falls in the category of commercial quantity because as per the

NDPS Act, the commercial quantity is defined at 20 ml., but in view of Rule 66 of the NDPS Rules, the petitioner could have carried the same even without any medical prescription. He further referred to the judgment of this Court passed in “*Sukhwinder Singh @ Vicky Vs. State of Punjab*”, 2021(1) RCR (Criminal) 177 and prayed that in view of the aforesaid judgment and considering the fact that the petitioner has clean antecedents and is not involved in any other case whatsoever and has been falsely implicated in the present case, he may be considered for grant of regular bail. He also submitted that initially the FSL report was not obtained and the petitioner was granted interim bail by the learned trial Court. He further submitted that thereafter, on the receipt of the FSL report, the petitioner was not informed with regard to the receipt of FSL report, and therefore, he remained absent for some time and he was declared as proclaimed offender on 02.03.2023, but immediately after two days i.e. 04.03.2023, he surrendered before the Court and therefore, it could not become a ground for denial of bail to the petitioner.

3. On the other hand, Mr. G.S. Sidhu, learned AAG, Punjab has stated that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the recovery from the petitioner was 25 injections of *Buprenorphine* containing 2 ml each and he is not involved in any other case and has clean antecedents. He has however submitted that since the petitioner was earlier declared as proclaimed offender and the confiscated quantity falls in the category of commercial quantity, he does not deserve the concession of regular bail.

4. I have heard the learned counsels for the parties.

5. The total custody of the petitioner is 8 months and 12 days. The

petitioner was stated to have been earlier released on interim bail to which as per the learned counsel for the petitioner, he was not informed with regard to the receipt of the FSL report and consequently, he was declared as proclaimed offender but the learned counsel for the petitioner has been able to show his *bona fide* by stating that immediately after two days of the declaration of proclaimed offender when it came to his knowledge, he himself surrendered before the Court. So far as the argument raised by learned counsel for the petitioner pertaining to the Rule 66 of the NDPS Rules is concerned, the case of the petitioner is certainly covered by judgment of this Court in *Sukhwinder Singh @ Vicky's case (Supra)*, although it can be seen only at the time of trial as to whether the aforesaid injections were required for his personal use or not even without the medical prescription.

6. Therefore, this court is of the view that in view of the aforesaid facts and circumstances and also in view of the aforesaid judgment, the petitioner is entitled for the grant of regular bail because the bar of Section 37 of the NDPS Act will not apply.

7. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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

16.11.2022

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No