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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-20199-2024 (O&M)
Date of decision : 25.07.2024

Vinod @ Vinod Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM:- HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sanjay Gahlawat, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No. 465 dated 21.05.2023, registered under Sections 22-C and 29 of the NDPS Act, 1985 at Police Station Samalkha, District Panipat.
2. Brief facts of the case relevant for the purpose of disposal of the present petitions are that on 21.05.2023, SI Sandeep and other police officials were on patrolling duty and they received a secret information that petitioner Vinod is coming from his village on a motorcycle with a heavy quantity of banned injections and if a raid is conducted, he can be apprehended. Believing the information to be reliable, a barrier was laid and petitioner Vinod was apprehended. He was carrying a red-yellow colored

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bag on the right side handle of the motorcycle. He was given notice under Section 50 of the Act and he opted to be searched in the presence of a gazetted officer, on which, Mr. Rahul Rathi, Naib Tehsildar, Samalkha was appointed as Duty Magistrate and was called at the spot and in his presence, the said bag was checked by the police and recovery of 50 injections of Avil having 10 ml each and 50 injections of *Buprenorphine* having 2 ml each was effected. Petitioner Vinod was formally arrested at the spot. During investigation, petitioner Vinod suffered disclosure statement naming co-accused Aas Mohammad as the person from whom, he had purchased the said injection for Rs. 3,000/-. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of aforesaid mentioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 22.02.2024.

3. Learned counsel for the petitioner has argued that he has been falsely implicated in this case. He is in judicial custody since 21.05.2023. He is not involved in any other case under the Act. The Avil injections recovered by the police do not fall within the ambit of NDPS Act. Even the recovery of 50 injections of Buprenorphine from the petitioner does not constitute any offence under the Act as in view of Rule 66 of the NDPS Rules. It is further argued that there was violation of Section 42 of the Act during investigation. The investigation has since been completed and *challan* has been presented. Trial is likely to take a long time. Therefore, it is urged that the petitioner deserves to be granted benefit of regular bail.

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4. *Per contra*, learned State counsel, on the basis of the status report and custody certificate, has opposed the prayer of the petitioner by submitting that since the commercial quantity of *Buprenorphine* was recovered from the petitioner, he is not entitled to get benefit of bail as the rigors of Section 37 of the NDPS Act will be attracted in this case. The trial may be expedited. Hence, it is urged that the petitions are liable to be dismissed.

5. I have learned counsels for the parties at considerable length and have also perused the material placed on record.

6. On a perusal of the record, it is revealed that the petitioner is in custody since 21.05.2023. As per prosecution, he was nabbed with 50 injections of Avil (*Pheniramine*) and 50 injections of *Buprenorphine*. The quantity of Buprenorphine injection falls under the commercial quantity. Hence, the rigors of Section 37 of the NDPS Act would certainly apply to this case. Though, it is submitted that the petitioner is not involved in any other case under the NDPS Act, however, a perusal of the custody certificate shows that he is involved in one more FIR under the NDPS Act. There is nothing on record to show that there would be any undue delay in conclusion of trial. Keeping in view the gravity of the allegations as levelled against the petitioner, the quantity of the recovered contraband, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, this Court is of the considered opinion that the petitioner is not entitled to get benefit of regular bail, at this stage. Hence, the petition is dismissed.

7. It is made clear that any observation made herein above is only

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for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

25.07.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No