



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-35680-2024
Decided on: 01.08.2024

Gaurav

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Mr. Harkirat Singh Bhogal, Advocate
for the petitioner(s).

Mr. Jasjeet S. Dhaliwal, AAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.49 dated 26.06.2023, under Section 22 of NDPS Act, registered at Police Station Kathgarh, District NBS Nagar (Nawanshahr).

2. Learned counsel for the petitioner submits that allegedly petitioner was apprehended by the police authorities on the basis of suspicion. It is alleged that on seeing the police party the petitioner had thrown the polythene bag from the motorcycle. The alleged recovery effected from the petitioner is 13 injections of 02 ml each, weighing 25.92 grams of Buprenorphine Hydrochloride, which is marginally higher than the commercial quantity. He fairly submits that petitioner was involved in one more case but he is on bail in that case. Further, he has placed reliance upon the judgments passed by this Court in CRM-M-20199-2024 decided on 25.07.2024 and CRM-M-55972-2023 decided on 30.07.2024.

3. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the

petitioner was actively involved in the commission of the offence and



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commercial quantity of contraband has been recovered from the accused because of which Section 37 of the Act would be a bar to the grant of bail. He has filed the custody certificate dated 31.07.2024 and the same is taken on record. As per custody certificate, the petitioner has undergone actual custody of 01 year, 01 month and 03 days. He on instructions from the concerned investigating officer-SI Rakeshwinder Singh, submits that charges were framed on 05.12.2023 but till date, out of total 15 prosecutions witnesses none have been examined till date.

4. Heard the rival submissions made by learned counsel for the parties.

5. In the cases of '*Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)*' decided on 11.11.2022, '*Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)*' decided on 19.01.2022, '*Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023*', and *Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023*, where the recovery from the accused was marginally above the commercial quantity for the respective contraband in each case, the Court granted bail to the accused therein.



6. In the present case, the alleged recovery from the petitioner is of 25.92 grams of Buprenorphine Hydrochloride, which is marginally higher than the commercial quantity. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of bail, moreso, when he is in custody since 26.06.2023 and none of the prosecution witnesses have been examined so far.

7. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges were framed way-back and only one prosecution witness has been examined till date. The petitioner has undergone actual custody of 01 year, 01 month and 03 days. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

8. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also 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 witness(s).

(III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.

(IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

(V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.



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prosecution shall be at liberty to move an application for cancellation of bail before this Court.

10. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

01.08.2024
Kapil

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*