

2024.PHHC.161202



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47338-2024 (O&M)

Date of decision: 03.12.2024

Deepak Kumar @ Machhi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Dinesh Nagar, Advocate
for the petitioner.

Mr. Manjot Kaur, AAG, Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition filed under Section 483 BNSS prayer is made for grant of regular bail to the petitioner, in case FIR No.48 dated 14.07.2023, under Section 21, 22, 29 of the NDPS Act, registered at P.S. Sadar Aur, District SBS Nagar.

2. The case as set up by the prosecution, through the instant FIR, the relevant thereof is extracted hereinafter:-

“Today, I SI was present at the police station when head Constable informed me that a telephone call had been resigned from SI Narender Kumar 323/INT to inform that he along with ASI Harmesh lal 2731/INT, ASI Kashmir Lal 77/KPT, S/CT Lakhwinder sing 2815-INT were going for the purpose of patrolling and checking of the suspicious person on private vehicle car from village bahara to village Aur at about 5 during day time when the police party reached near petrol pump bahara road then from the front side a haircut youngster was seen coming on foot. I ASI

stopped the youngster who upon seeing the police party threw away the transparent polythene bag in his right side on the corner of the road at the muddy end. Upon seeing the polythene bag lying upon the ground, there were injections without batch number upon which it was written in English 'Buprenorphine injection IP' Leegesic 2 ml and another small polythene bag containing heroine was there. Competent officer being sent on the spot. I ASI along with ASI Surender Pal 307/SBS Nagar, ASI Satpal 245/SBS Nagar, ASI Major Ram 171/SBS Nagar reached on the private vehicle car carrying laptop and printer at the spot near petrol pump bahara road where ASI Narender Kumar produced the apprehended youngster before me SI. The apprehended person was about his name and address who disclosed his name to be Deepak Kumar @ Machi son of Raj Kumar R/O Valmiki mohalla, Aur PS Aur. I. SI informed him about my name and ranked. Thereafter, a search was conducted upon the apprehended person where in an attempt was made to include an independent witness from the public, but nobody agreed. The poly bag thrown by Deepak Kumar upon checking contained 24 injections of Buprenorphine Injection IP leegesic 2ml each were without batch number and label, and the date of manufacture was also erased and a small polythene bag containing heroine was also recovered. I Si check the weight of the apprehend counter band on the weighing scale available with me upon being the counter band was measured at 8 g of heroin. The recovered heroine was there after placed in a plastic box container, and a parcel was prepared from it and marked as mark a, and the 24 injections of Buprenorphine Leegesic 2ML was marked as mark B. I SI appended my seal upon the samples as HL. Thereafter, the samples were made in triplicate with bearing mark HL. Thereafter the same was handed over to ASI major Ram 171 containing 8 g of heroine with mark HL and 24 injections of Buprenorphine IP LEEGESIC 2ML without batch number in a polythene bag. A fard/recovery memo for the same was prepared. Thereafter, the same was taken into police possession against the apprehended, Deepak Kumar, Alias Machi, son of Raj Kumar, resident of Valmiki Mohalla Aur, has by keeping in his possession, 8 g of heroine, and 24 Intoxicating injections of Buprenorphine Leegesic 2ML, each without batch number or lebel has committed an offence under section 21/22- 61-1985 NDPS Act and special report under section 57. NDPS act. is being prepared under Section 57 of NDPS Act and sent to ASI Surinder Pal No. 307 in the service of District Monitoring Officer Sub Division Nawanshahr and a case has been filed against Deepak Kumar alias Fish. The son of Raj Kumar, a resident of Balmik Mohalla Andar, is sent to the police station of ASI Surinder Pal No. 307. after registering a case, the number should be informed about the case. A special report should be prepared and sent to the control room of the District Magistrate and the officers in the service of Balaji. It should be reported to Man SI. Including the opportunity of partner Kramacharya but Mashruf Taftish yes correct/- Hussan Lal Si police station and date 14-07-2023 Today Ba-Had Rakba Village Aur 8:00 PM Today police station after receiving the said letter and registering the said case under the said Dharawa Handy Arinda is being sent to Makkah for investigation after passing the appointed SI of ASI. The current special report is being prepared and sent to the service of the Honorable District Magistrate Sahib and senior officers.....”

2. As per the allegations, 24 injections of Buprenorphine (which admittedly falls within the ambits of commercial quantity), and 8 grams of heroin (non-commercial quantity), has been effected from the present petitioner.

3. Learned counsel for the petitioner, in asking for the relief of regular bail, submits that the petitioner has suffered incarceration of about 01 year, 05 months, as on date.

4. He further submits that though the petitioner has been convicted in one other criminal case under the NDPS Act, however, he has completed his sentence in that case.

5. He also submits that till date the prosecution is able to examine only 04 witnesses, out of the total 12 witnesses cited by the prosecution in the final report.

6. He, in addition, submits that co-accused-Raj Kumar @ Raju, who is arrayed as accused on the basis of the confessional statement of the present petitioner, has already been granted the relief of regular bail by the Supreme Court by drawing the order dated 14.11.2024 in Criminal Appeal No.4580 of 2024.

7. *Per contra*, the learned State counsel vociferously opposed the asked for relief of grant of regular bail to the petitioner, and submits that the recovery effected from the present petitioner in the instant case falls within the ambit of commercial quantity, as per the schedule attached to the NDPS Act, therefore, the vigor of Section 37 of the NDPS Act, would come in operation and the present petitioner does not satisfy

such condition, he already having been convicted in other case under the NDPS Act, and completed his sentence.

8. To lend vigor to her arguments, she has also filed a reply, dated 02.12.2024, by way of an affidavit of Sh.Raj Kumar, DSP, Sub-Division Nawanshahr, District SBS Nagar, today in the Court, which is taken on record.

9. She has also placed on record a custody certificate *qua* the petitioner, which is taken on record, and a perusal of the same reveals that the petitioner has suffered incarceration of 01 year 04 months and 15 days, as on today. He is stated to be convicted in one other criminal case under the NDPS Act, wherein he has completed his sentence on 02.10.2024.

10. She further submits, on instructions imparted to her by the police official concerned, that in the instant case final report was filed way back on 09.01.2024, and charges were framed on 30.01.2024, and out of the total 12 witnesses as cited by the prosecution, 04 witnesses have been examined, 04 witnesses have been given up, whereas 04 witnesses are still left to be examined

11. This Court has considered the rival submissions made by learned counsel for the parties concerned, and has gone through the entire case file, and is of the considered opinion that the instant petition is amenable for being **allowed**.

12. The reason for forming the above inference emanates from the factum that:

- (i) The petitioner has suffered incarceration of 01 year 04 months and 15 days, as on today;
- (ii) out of the total 12 prosecution witness, 04 have been examined, till date, however 04 have been given up;
- (iii) though as per the custody certificate, the petitioner is stated to be involved in one other criminal case under NDPS Act, however, he has completed his sentence in that case;
- (iv) no fruitful purpose would be served by keeping the petitioner behind the bars;
- (v) trial is not likely to conclude anytime soon;

13. The above view of this Court is fortified by the ratio of the judgment laid down in "**Rabi Prakash Versus The State of Odisha**", **Special Leave to Appeal (Criminal) No.4169 of 2023**, wherein the Supreme Court has discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

14. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

15. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.

16. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as is involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court.

17. All pending application(s), if any, also stand **disposed** of accordingly.

December 03, 2024

Satyawan/dharamvir

(KULDEEP TIWARI)
JUDGE

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