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2025:PHHC:026718



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-57342-2023

Date of decision: 24.02.2025

Shubham Joshi

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Preetinder Singh Ahluwalia, Advocate and
Mr. Jaiveer Singh, Advocate, for the petitioner.

Mr. Rajat Gautam, Addl. A.G., Haryana and
Mr. Rahul Mohan, Senior DAG, Haryana

MANJARI NEHRU KAUL, J. (ORAL)

Prayer in this petition filed under Section 439 of Cr.P.C. is for grant of regular bail to the petitioner, pending trial, in case FIR No.96, dated 19.02.2023, under Sections 22(c) of NDPS Act, 1985, registered at Police Station Old Industrial Area, District Panipat.

Learned counsel for the petitioner submits that the petitioner has been implicated in the present case solely on the basis of disclosure statement of co-accused, Nitin. It has been submitted that the petitioner's implication in the present case is wholly unwarranted, as he was neither named in the FIR nor apprehended at the spot with co-accused, Nitin. His involvement in the present case was introduced only through the disclosure statement of co-accused, Nitin, from whom 40 injections of buprenorphine were allegedly recovered. It is

argued that such a disclosure statement has weak evidentiary value and does not, in any way, prove the petitioner's culpability in the present case.

It is further contended that the alleged recovery of 1000 injections of buprenorphine pursuant to the petitioner's disclosure statement is highly suspect. Initially, on 19.02.2023, as per the case of the prosecution, the petitioner allegedly stated in his first disclosure that he had purchased the injections from one Amit. However, in pursuance of the first disclosure statement, only Rs.2,500/- was recovered from him, with no contraband or injections being seized. Learned counsel has argued that strangely, on the same day, the petitioner is said to have made another disclosure statement, this time omitting the name of Amit and instead leading to a recovery of 1000 injections of buprenorphine from a public place i.e. bushes along the road side, situated approximately 02 kilometres away from his premises.

Learned counsel for the petitioner has argued that such a recovery from an open and much frequented space, unconnected to the premises of the petitioner, cannot be attributed to his conscious possession.

It is still further submitted that the petitioner has been in custody for over 02 years, having been arrested on 19.02.2023. Despite his long incarceration, only 07 out of the 16 prosecution witnesses have been examined so far. Furthermore, co-accused, Nitin, from whom the initial recovery was made, has also been granted bail. Given the slow progress of the trial, it is unlikely to conclude in the near future, and thus, the petitioner deserves to be granted bail on this ground of delay also.

Per contra, learned State counsel has vehemently opposed the prayer and submissions made by the counsel opposite. It has been submitted

that no doubt in the first disclosure statement suffered by the petitioner, no recovery of any contraband was made except for Rs.2,500/- and the petitioner had nominated one Amit as an accused, however, subsequently, the petitioner suffered a second disclosure statement leading to the recovery of 1000 injections of buprenorphine (measuring 2000 ml) from road side bushes. It is submitted by the learned State counsel, on instructions, that while the recovery was not from the premises of the petitioner, it was the petitioner who led the police to the spot, facilitating the seizure. However, on a specific query from the court, the State does not dispute that the petitioner has no previous criminal antecedents. Furthermore, it is conceded that no contraband was recovered pursuant to the petitioner's first disclosure statement.

The learned State counsel, however, argues that large quantity of the recovered contraband attracts the bar under Section 37 of the NDPS Act, thereby dis-entitling the petitioner from the grant of bail.

I have heard learned counsel for the parties and perused the material placed on record.

As per the case of the prosecution, co-accused, Nitin, was apprehended based on secret information, leading to the recovery of 40 injections of buprenorphine. He subsequently made a disclosure statement nominating the petitioner as the supplier of the contraband. It is not disputed that co-accused, Nitin, has already been released on bail.

The recovery attributed to the petitioner was made from an open area, approximately 02 kilometres away from his premises. The evidentiary value of successive and inconsistent disclosure statements requires careful scrutiny during trial.

The petitioner has been in custody for over 02 years, and there is no reasonable likelihood of the trial concluding soon, given that only 07 out of the 16 prosecution witnesses have been examined so far. Long incarceration of the petitioner, particularly when the main accused, Nitin, has already been granted bail, weighs in favour of the release of the petitioner on bail.

In view of the aforesaid facts and circumstances, without commenting on the merits of this case, this Court deems it fit to extend the concession of bail to the petitioner.

Accordingly, the instant petition is allowed and the petitioner be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

Needless to add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

(MANJARI NEHRU KAUL)
JUDGE

February 24, 2025

sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No