

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

CRM-M No.22815 of 2018

Date of decision : 05.09.2018

Balraj Singh alias Raja

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Amit Dhawan, Advocate for the petitioner.

Mr. C. L. Pawar, Senior DAG, Punjab.

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DAYA CHAUDHARY, J. (Oral)

Petitioner Balraj Singh alias Raja has approached this Court by way of present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.60 dated 01.11.2017 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') registered at Police Station Sadar Rajpura, Distt. Patiala, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas he was not involved. He was not found to be in possession of any alleged recovery of injections. Learned counsel further submits that the petitioner was picked up by the police and thereafter he has been implicated in the case. As per version of the prosecution, the petitioner has been shown to be apprehended by the

police while coming out of Haryana Roadways bus on G.T. Road. The version of the prosecution cannot be believed that petitioner and co-accused namely Gurjeet Singh alias Jeeta got down from the bus in order to escape from the police. Learned counsel also submits that the petitioner has been implicated in the case by making a false story at the instance of the opposite political party. The place of occurrence has been shown to be at G.T. Road and the petitioner and co-accused have been shown to be sitting in a bus of Haryana Roadways but no independent witness was joined at the time of alleged recovery. Even no passenger was asked to join at the time of search and seizure proceedings at the place of occurrence. Neither the number of the bus nor the names of driver and conductor have been reflected in the FIR. Learned counsel further submits that alleged independent witness namely Lakhwinder Singh who was joined at the time of seizure proceedings is not an independent witness, rather he is a stock witness and close to ASI Swarn Singh. Learned counsel also submits that ASI Swarn Singh is the complainant and he cannot be the Investigating Officer of the case. As per the allegations in the FIR, both the accused have been shown to be in possession of one black colour bag from which the intoxicant injections were allegedly recovered by the concerned police officials. It has been shown that one strip of the bag was held by the petitioner and the other strip was held by the co-accused. At the end, learned counsel for the petitioner submits that the petitioner has been shown to be in possession of intoxicant injections of Omgesic and Avil having same batch number, which are easily available in the market. There is no other case of NDPS

Act against the petitioner. He is in custody since 01.11.2017. In support of his arguments, learned counsel for the petitioner has relied upon judgment of Hon'ble the Apex Court in case ***Sajan Abraham Vs. State of Kerala 2004 (2) RCR (Criminal) 137*** and judgments of this High Court in cases ***Saleem Mohd. Vs. State of Punjab 2015 (25) RCR (Criminal) 816***, ***Satwinder Singh Vs. State of Punjab CRM-M No.20997 of 2017 decided on 30.08.2017***, ***Sonu Vs. State of Punjab CRM-M No.30008 of 2017 decided on 06.10.2017***, ***Sulakhan Singh @ Billa Vs. State of Punjab CRM-M No.1010 of 2018 decided on 24.01.2018***, ***Mandeep Singh @ Deep Vs. State of Punjab CRM-M No.15370 of 2018***, ***Amandeep Vs. State of Punjab CRM-M No.250 of 2018 decided on 12.01.2018***, ***Dr. Rajinder Singla Vs. State of Punjab CRM-M No.37530 of 2015 decided on 18.11.2015*** and ***Vikas Sehgal Vs. State of Punjab 2010 (3) RCR 70***.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the grounds that the alleged recovery is commercial and it cannot be a case of false implication. The petitioner is not entitled for bail keeping in view the provisions of Section 37 of the NDPS Act.

Heard arguments of learned counsel for the petitioner as well as learned State counsel. I have also perused the contents of the FIR and other documents on the file.

As per the allegations in the FIR, the total recovery from both the accused is 90 injections of Buprenorphine containing 2 ml each, which comes to 180 ml in total. As per proviso to Rule 66 of NDPS Act an

individual can possess 100 doses of Buprenorphine Hydrochloride. The controversy with regard to Buprenorphine at Serial No. 169 of the notification/Schedule of the NDPS Act, would be debatable as to whether it is a psychotropic substance or not.

In view of the conflicting opinion given in ***Kismat Singh Vs. State of Punjab, 2012 (2) RCR (Criminal) 329*** and ***Ajaib Singh Vs. State of Punjab, 2012 (2) RCR (Criminal) 330***, wherein it was held that Buprenorphine falls under Drugs and Cosmetics Act and the salt has not been included in the Schedule I of the NDPS Rules, whereas as per judgment in case ***Dilip Kumar Virvani and others Vs. State of Chattishgarh, 2014 (35) RCR (Criminal) 329***, Buprenorphine Hydrochloride is a psychotropic substance within the meaning of Section 2 (xxiii) of the Act. Same issue was there in judgments of this Court in cases ***Amandeep Vs. State of Punjab*** (supra), ***Sonu Vs. State of Punjab*** (supra) ***as well as Sulakhan Singh @ Billa Vs. State of Punjab*** (supra).

Accordingly, keeping in view the ratio of law laid down in the judgments passed by the Coordinate Benches in the above said cases and without commenting anything on the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of the trial Court.

05.09.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No