

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-33971 of 2018

Date of Decision: 04.10.2018

Rajiv Kumar

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Mr. Rana Harjasdeep Singh, DAG, Punjab.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner in case FIR No.61 dated 07.08.2017 under Section 22 NDPS Act registered at Police Station Sadar Banga, District SBS Nagar.

As per the case of the prosecution, the alleged recovery made from the petitioner is 30 injections of Buprenorphine Hydrochloride of 2 mg each and 30 injections of Avil of 10 mg each.

Learned counsel for the petitioner submits that so far as the recovery of 30 injections of Avil is concerned, the same does not fall under the NDPS Act. Rather, the same fall under the Drugs and Cosmetics Act, 1940. He further submits that the petitioner is an HIV patient and he needs

to be taken care of by his family members. He is in custody since 07.08.2017 and out of the total 9 witnesses cited by the prosecution, only 2 witnesses have been examined so far. In support of his case, he has relied upon order dated 23.04.2018 of this Court passed in CRM-M-15387-2018 *Sarvesh Kumar Vs. State of Punjab* and order dated 25.01.2018 of this Court passed in CRM-M-25787-2017 *Hitesh Kumar @ Ashu Vs. State of Punjab*.

Learned State counsel has contested this petition on the ground that the petitioner is involved in another FIR i.e. FIR No.160 dated 16.12.2016 under Section 22 NDPS Act, P.S. Rahon, District SBS Nagar. He further submits that though the petitioner is an HIV patient but his general condition is stable and he can avail treatment from jail hospital itself. He has also pointed out that the quantity so recovered from the petitioner falls in the category of commercial quantity.

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

This Court in the case of **Ashok Kumar @ Shoki Vs. State of UT, Chandigarh** CRM-M-16868-2018 decided on 04.07.2018 while dealing with Rule 66(ii) NDPS Act, whereby it is provided that a citizen is lawfully authorized to possess upto 100 doses at a time, has granted regular bail to the petitioner therein. Similarly, in order to counter the plea raised on behalf of learned State counsel that the petitioner is involved in another case, reliance may be placed on order of this Court in the case of **Hitesh Kumar @ Ashu** (*supra*), wherein this Court has granted regular bail to the petitioner therein, who was involved in two more FIRs. In the instant case,

the petitioner is an HIV patient and is in custody since 07.08.2017. Therefore, considering the fact that out of the total 9 witnesses cited by the prosecution, only 2 witnesses have been examined so far and trial in the case will take long time and no useful purpose will be served to keep the petitioner, who is an HIV patient, in custody, I deem it appropriate to release him on regular bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of the trial Court. However, it is made clear that in case the petitioner is found involved in any other case of NDPS Act, in future, the prosecution shall be at liberty to seek cancellation of his bail.

October 04, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No