

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

**Criminal Misc. No. M-38986 of 2018
Date of decision: 19.11.2018**

Nitin Rajput @ Raman

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Raj Kumar Gupta, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG, Punjab
for the respondent-State.

Daya Chaudhary, J. (Oral)

The present petition has been filed by petitioner-Nitin Rajput @ Raman under Section 439 Cr.P.C. for grant of regular bail in case FIR No.3 dated 03.01.2018 registered under Section 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Garhshankar, District Hoshiarpur.

Learned counsel for the petitioner submits that the Avil injections does not fall under the NDPS Act and the alleged recovery of 12 injections of Buprenorphine are marginally higher than the commercial quantity. 100 doses of buprenorphine can be possessed by an individual in view of Rule 66 of the NDPS Act. Learned counsel further submits that the consent memo is also fabricated document as it bears the FIR number, which shows the false implication of the petitioner and no Gazetted Officer or Magistrate was joined at the time of alleged recovery. Learned counsel also submits that under the similar circumstances, one accused, namely, Iqbal Singh, was released on regular bail by this Court vide order dated

.....

05.09.2018 passed in Criminal Misc. No. M-20545 of 2018 in FIR No.242 dated 25.10.2017 under Section 22 of the NDPS Act. Similarly, in another case, Balraj Singh alias Raja was also granted regular bail by this Court vide order dated 05.09.2018 passed in Criminal Misc. No. M-22815 of 2018 in FIR No.60 dated 01.11.2017. Learned counsel also submits that all the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence. Learned counsel for the petitioner has also relied upon judgment rendered by Hon'ble the Apex Court in *Sajan Abraham vs. State of Kerala, 2004(2) RCR (Criminal) 137* in support of his arguments.

Learned State counsel has not disputed the custody period as well as the fact that no other case of NDPS Act is pending against the petitioner.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file. I have also gone through the orders passed in similar circumstances in the aforesaid cases.

In the present case, the alleged recovery is 12 injections of Buprenorphine. As per proviso to Rule 66 of the 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 CRM-M No.250 of 2018 decided on 12.01.2018*, *Sonu Vs. State of Punjab CRM-M No.30008 of 2017 decided on 06.10.2017* as well as *Sulakhan Singh @ Billa Vs. State of Punjab CRM-M No.1010 of 2018 decided on 24.01.2018*.

Accordingly, keeping in view the ratio of law laid down in above said judgments and the orders passed under the similar circumstances, the present petition is allowed and the petitioner (Nitin Rajput @ Raman) is directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of the trial Court.

19.11.2018
neetu

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable Yes