

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 7375 of 2019

- Avinash Nishad S/o Ganesh Ram Nishad, Aged About 35 Years R/o. Devari Khurd, P.S. Torwa, District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through Station House Officer, Police Station Civil Lines, District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Respondent

For Applicant	:-	Mr. Rajeev Kumar Dubey, Adv.
For Respondent-State	:-	Mr. V.K. Agrawal, PL

Hon'ble Smt. Justice Rajani Dubey
Order on Board

13/01/2020

- The accused/applicant has moved this first bail application under Section 439 of the Code of Criminal Procedure for releasing him on regular bail during trial in connection with Crime No. 701/2019 registered at Police Station - Civil Line, District Bilaspur (C.G.) for the offence punishable under Sections 21 and 22 of the NDPS Act & Section 34 of the IPC.
- The prosecution story, in brief, is that the allegation

against the present applicant is that on being raid, from the possession of applicant 200 numbers of Rexogesic Injection and cash amount of Rs.4200/- from the vehicle of the applicant were seized. Based on this, offence has been registered. The present applicants have been taken into custody on 22.10.2019.

- Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the case. He is in jail since 22.10.2019. No case is made out against the applicant for the commission of offence under the NDPS Act. Injections Rexogesic seized from the possession of the applicant contain 'Buprenorphine Hydrochloride' is the drug specified under the Drugs and Cosmetics Act, 1940 and it does not find mention in the list of prohibited drugs contained Schedule of the NDPS Act. It is submitted that although there is mention of 'Buprenorphine' at Sr. No.169 of the list of psychotropic substances specified in the Schedule I of the NDPS Act but that is a different drug. It has been held in the matter of **Rajinder Gupta & ors. vs. State** reported in **2006 Cr.L.J. 674** that 'Buprenorphine Hydrochloric' is not a scheduled drug under the NDPS Act and for the purpose of the same it may be an offence under the Drugs and Cosmetics Act and not an offence under NDPS Act. It is further submitted that charge-sheet has already been filed. In these circumstances, it is prayed that he may be enlarged on regular bail.
- On the other hand State counsel strongly opposes the bail application.

- I have heard learned counsel for the parties and perused the entire material available on record.
- After considering the submissions made by the counsel for the applicant and finding that there is no specific mention of 'Buprenorphine Hydrochloride' in the Schedule I appended to the NDPS Act and further considering the fact that the present applicant is in jail since 22.10.2019 and as the trial is likely to take some time for its final disposal, this Court is of the view that it is a fit case to release the applicant on bail. Accordingly, the application is allowed.
- Accused/applicant is directed to be released on bail on their executing a personal bond in the sum of Rs. 50,000/- with one local surety in the like sum to the satisfaction of the trial Court. Applicant is directed to appear before the said Court on each and every date given to him by the said Court.

Sd/-
(Rajani Dubey)
Judge