

CRM-M-4582 of 2021 and other connected cases {1}

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

**1. CRM-M-4582 of 2021
Date of decision:21.09.2021**

Narender ... Petitioner
Vs.

State of Haryana ... Respondent

2. CRM-M-9610 of 2021

Rajesh @ Raja ... Petitioner
Vs.

State of Haryana ... Respondent

3. CRM-M-29910 of 2021

Arvind @ Bablu ... Petitioner
Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sandeep Kotla, Advocate
for the petitioner in CRM-M-4582 of 2021 and
CRM-M-9610 of 2021.

Mr. Keshav Pratap Singh, Advocate
for the petitioner in CRM-M-29910 of 2021.

Mr. Gurmeet Singh, AAG, Haryana.

SUVIR SEHGAL J.

Heard through video conferencing.

This order shall dispose of CRM-M-4582 of 2021 titled
as 'Narender Vs. State of Haryana'; CRM-M-9610 of 2021 titled
'Rajesh @ Raja Vs. State of Haryana' and CRM-M-29910 of 2021

CRM-M-4582 of 2021 and other connected cases {2}

titled as 'Arvind @ Bablu Vs. State of Haryana' as all the three petitioners are accused in FIR No.157 dated 21.08.2020 registered under Sections 22(c), 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) at Police Station Bhattu Kalan, District Fatehabad and have approached this Court by way of separate petitions filed under Section 439 of the Code of Criminal Procedure seeking grant of regular bail.

As per the version of the prosecution, FIR, Annexure P-1 has been registered when on the basis of secret information, a raid was conducted at the shop of Arvind alias Bablu (petitioner in CRM-M-29910 of 2021) and he was found to be in possession of 7200 tablets of Tramadol Hydrochloride weighing 4 kg 854 grams. He named accused Satpal, Monu alias Shishpal, Rajesh @ Raja (petitioner in CRM-M-9610 of 2021) and Narender (petitioner in CRM-M-4582 of 2021) as the persons, who had supplied contraband to him from Rajasthan.

Counsel representing the accused-Arvind @ Bablu has urged that the mandatory provisions of NDPS Act, have not been complied with inasmuch as the Gazetted Officer before whom the petitioner was brought, did not comply with the provisions of Section 50 ibid and did not apprise him of his right. Reliance has been placed by him upon the judgement of Coordinate Bench of this Court in **Joginder Singh vs. State of Punjab 2019 (3) RCR(Criminal) 291**

and order dated 04.08.2021 passed by this Court in **CRM-M-26565-2021 titled as Ravinder @ Ravi @ Ravinder Pal vs State of Haryana**. Counsel submits that the petitioner is the sole breadwinner of the family and has a one year old son and ailing mother to take care of and he has been falsely framed in the case.

Counsel representing accused-Narender and Rajesh alias Raja has submitted that the petitioners have been nominated as accused on the basis of the confessional statement and no recovery has been affected from them. He urges that the entire prosecution case is full of infirmities and weakness and the petitioners, who are not involved in any other criminal case, deserve to be enlarged on bail.

State counsel upon instructions from ASI Hardyal Singh and by making a reference to the reply filed by way of an affidavit of Deputy Superintendent of Police, Traffic, Fatehabad has opposed the petitions on the ground that the contraband recovered falls within the ambit of the commercial quantity as per the provisions of the NDPS Act, and the bar as contained in Section 37 is attracted. He submits that accused Rajesh is involved in some other cases, which fact he has not disclosed in his petition. Upon further instructions, he submits that the challan against the petitioners has been presented on 19.02.2021 and the charge has been framed on 10.09.2021.

I have considered the respective submissions of counsel for the parties.

A huge quantity of contraband has been recovered from the general merchandise shop being run by accused Arvind alias Bablu. In compliance of the provisions of Section 50 of the NDPS Act, a Gazetted Officer was called at the spot and the search of Arvind alias Bablu was conducted from where the contraband was recovered, though attempts were made to associate some independent witness yet no one from the public joined the proceedings. The reliance placed by counsel for petitioner upon the judgement in Joginder's case will not advance his case as the issue as to whether the Gazetted Officer or Magistrate before whom an accused person is brought is required to comply with the provisions of Section 50, *ibid*, by apprising the person of his/her right has been referred to a Larger Bench by this Court in Ravinder alias Ravi alias Ravinder Pal's case (*supra*). Moreover, in Ravinder alias Ravi alias Ravinder Pal's case (*supra*), this Court ordered release of the accused on bail as no recovery was effected from their personal search and the accused were not found to be involved in any other case.

However, insofar as accused-Rajesh alias Raja is concerned, he is involved in four other cases, the details thereof are as under:-

- (a) FIR No.251 dated 25.10. 2017 registered under Section 25 Arms Act, at Police Station Bhattu Kalan, District Fatehabad;

(b) FIR No. 224 dated 24.11.2020 registered under the provisions of the the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station Ding, District Sirsa;

(c) FIR No. 158 dated 08.03.2018 registered under Sections 323, 341, 143 IPC at Police Station Hanumangarh Junction, Rajasthan, in which he has been acquitted; and

(d) FIR No.3 dated 05.01.2018 registered under Sections 344, 366, 376-D IPC registered at Police Station Bihrani, Rajasthan.

The fact that accused-Rajesh has not approached this court with clean hands and has suppressed his criminal antecedents, dis-entitles him to the grant of concession of regular bail. Insofar as accused-Narender is concerned, suffice is to notice his statement, Annexure R-1, wherein, he has admitted that he is an addict and was regularly visiting the shop of accused-Arvind alias Bablu for purchase of intoxicating tablets, where he came in contact with Satpal and went to Rajasthan at his behest for getting the supplies of the intoxicating tablets.

The contraband seized falls within the ambit of the commercial quantity and the rigor of Section 37 of the NDPS Act will apply. Hon'ble Supreme Court in **State of Kerala Vs. Rajesh and**

others 2020(1) RCR (Criminal) 818 has held that till the time the conditions laid down under Section 37, *ibid*, are not met with, the accused do not deserve to be released on bail. No material could be referred to by the petitioners to show that the petitioners are not involved in the offence alleged nor is the Court satisfied that in case the petitioners are released on bail they are not likely to indulge in a similar offence in future.

Keeping in view the totality of the facts and circumstances, this Court is of the view that the petitioners are not entitled to the benefit of regular bail. All the petitions are accordingly dismissed.

Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

September 21, 2021
savita

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>