

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

207

CRM-M No.39129 of 2021
Date of Decision:October 26, 2021

Raj Kumar alias Raju

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr.Ram Bilas Gupta, Advocate for the petitioner.
Mr.Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA J. (ORAL)

FIR	Dated	Police Station	Section
381	02.06.2021	Sector 7, District Faridabad	22C and 61 of NDPS Act

Incarcerating on being arrested under Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), for possessing BUPRENORPHIN injections has come up before this Court under Section 439 of Cr.P.C, seeking bail, on the grounds that the quantity of contraband allegedly seized is intermediate quantity and does not restrict bail; hence the restrictions for bail imposed in Section 37 of NDPS Act, do not apply, and in the present case he is in custody for a considerable time.

2. In Para 17 of the bail application, the petitioners declare having no criminal history.

3. Briefly, the allegations against the petitioner are that on 02.06.2021, the Investigator alongwith police officials were patrolling in the jurisdiction in office Police Station and at that time he received a secret information from a reliable source that the petitioner-Raj Kumar @ Raju indulges in sale of

BUPRENORPHINE injections. The informant further told that the Investigator that the said person is currently possessing such injections and can be nabbed. The Investigator recorded the information under Section 42 of NDPS Act and allegedly complied with the legal requirements and after that started looking for the accused. The informant signalled towards a person and pointed out him to be Raj-Kumar. After that the Investigator told him about his intention to carry out search and apprised him of his legal rights under Section 58 of the NDPS Act. Subsequently, in the presence of Executive Magistrate, the accused was searched and alleged to recovery of 10 injections of BUPRENORPHINE, 2 ml. each in all weighing 20 grams. Subsequently, the Investigator conducted remaining procedural formalities required under Cr.P.C and NDPS Act and arrested the accused.

4. Ld. Counsel for the petitioners contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

5. On the contrary, the contention on behalf of the State is that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions.

6. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborate and stringent conditions. In **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

REASONING:

7. Given the quantity of Psychotropic substance and the fact that accused is a first offender, I am of the considered opinion that further incarceration is not required.

8. The reasons for rejection of the bail by Special Judge stands diluted due to period of incarceration undergone by the accused.

9. An analysis of entire evidence does not justify further incarceration of

the accused, nor is going to achieve any significant purpose. Without commenting on the case's merits, given the investigation stage, the period of incarceration already undergone, and the circumstances peculiar to this case, the petitioners make a case for release on bail.

10. Given the above reasoning, the Court is granting bail to the petitioners, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of Cr.P.C, 1973.

11. The petitioners shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of **Rs. Ten thousand (INR 10,000/-)**, and shall furnish one surety of **Rs. Twenty-five thousand (INR 25,000/-)**, to the satisfaction of the Special Judge/Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Ilaqa Magistrate. Before accepting the sureties, the concerned Court must satisfy that in case the petitioners-accused fail to appear in Court, then such sureties are capable to produce the petitioners-accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

12. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

a) The petitioners to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioners also promise to appear before the higher Court in terms of Section 437-A Cr.PC.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the

petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) The petitioners shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

d) The petitioners shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioners shall not be called before 8 AM and shall be let off before 5 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

13. **Given the gravity of accusations and the heinous nature of the offence, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within 30 days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case.**

14. During the trial's pendency, if the petitioner **repeat** or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities.

Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

15. In case of non-appearance, then irrespective of the contents of the bail bonds, the petitioners undertake to pay all the expenditure (only the principal amount without interest) that the Government(s) might incur to produce them before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of Cr.P.C. The petitioners' failure to reimburse shall entitle the trial Court to order the transfer of money from the petitioners' bank account(s). However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioners alone, and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and that voyage was not for any other purpose/function what so ever.

16. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi.

17. In case the petitioners find the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioners may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

18. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

19. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

20. In return for the protection from incarceration, the Court believes that

the petitioners-accused shall also reciprocate through desirable behavior.

21. The SHO of the concerned Police Station or the Investigating Officer shall arrange to send a copy of this order, preferably a soft copy, to the victim, within two days. In case the victim notices any objectionable behavior or violation of any terms or conditions of this order, the victim may inform the SHO of the concerned Police Station or the Trial Court or even to this Court.

22. *There would be no need for a certified copy of this order for furnishing bonds. Any Advocate for the petitioners can download this order along with the case status from the official web page of this Court and attest it to be a true copy. The Prosecutor shall also verify the downloaded copy by comparing it from the official web page. In case the attesting officer or the Court wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

In the facts and circumstances peculiar to this case, the petition is allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

October 26, 2021

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Whether speaking/reasoned:	Yes
Whether reportable:	No