

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

CRM-M-40703-2021

Date of Decision : 04.10.2021

Raja

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Sarju Puri, Advocate
for the Petitioner.

Mr. B.S. Sewak, Addl. Advocate General, Punjab
for the Respondent/State.

SUDIP AHLUWALIA, J. (ORAL)

The instant Petition has been filed under Section 439 of the Code of Criminal Procedure seeking Regular Bail on behalf of the Petitioner in case FIR No.13, dated 26.02.2021, registered under Sections 21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Aur, District SBS Nagar.

2. The Petitioner has remained in detention for 7 months and 4 days till date since 28.02.2021 as per Custody Certificate sent up on behalf of the State, today.

3. Attention of the Court has been drawn to the allegations in the FIR to the effect that recovery of 50 intoxicating injections weighing 2 ml. each, apart from another 50 ampules of the drug Avil was effected from the Petitioner besides an unspecified quantity of *Heroin*. Thereafter, attention of the Court is drawn to the final FSL Report (Annexure P-1) from which it

transpires that the intoxicating injection whiles sent up as Exhibit-1 were found to contain Tramadol Hydrochloride. The total weight of such contraband recovered from the Petitioner was admittedly 50 ml. which is well below the commercial quantity of 250 grams. Second recovery falling under Exhibit-2 was of Pheniramine Maleate which itself is not covered under the NDPS Act, and the last item allegedly recovered from the Petitioner was Diacetylmorphine/*heroin* weighing 5 grams only, which is undoubtedly a small quantity. As such the element of recovery of contraband involving commercial quantity is clearly missing in the present case on account of which the bar under Section 37 of the NDPS Act does not apply here.

4. In the meantime, investigation against the Petitioner has already been completed and Challan submitted. Trial in the case is yet to commence even the Charges have not yet been framed.

5. Further detention of the Petitioner for an indefinite period, at this stage, in the given circumstances, is therefore not called for. As such, he is ordered to be released on bail subject to appropriate terms and conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate concerned.

6. Disposed off.

October 04, 2021

Dpr

(SUDIP AHLUWALIA)

JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No