

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

CRM-M-22869-2022

Date of Decision: 30.05.2022

Rahul

...Accused-Petitioner(s)

Versus

State of Haryana

...Complainant-Respondent(s)

CORAM:- HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Balvinder Sangwan, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

VINOD S. BHARDWAJ J.

This is the first petition filed by the petitioner under Section 439 read with Section 482 of the Code of Criminal Procedure (hereinafter to be referred as 'Cr.P.C.') seeking regular bail in the case bearing FIR No. 333 dated 02.06.2021 registered at Police Station Mujesar, Faridabad under Section 22(c), 29-61-85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act'), Section 188 of the Indian Penal Code, 1860 (hereinafter to be referred as 'IPC'), Section 51 of the Disaster Management Act, 2005 and Sections 27(B) (II) and 28 of the Drugs and Cosmetics Act, 1940.

Learned counsel appearing on behalf of the petitioner contends that the FIR in the instant case has been registered at the instance of ASI Samunder Singh and is based upon a secret information that one Tarun @ Kalu resident of Nangla Enclave, Faridabad, was engaged in the business of selling of narcotic injections and that he was presently wandering in the area

of Press Colony to sell the narcotic injections. In the event of the raid being conducted, he can be apprehended along with the contraband in his possession. Considering the information to be reliable and complying with the mandate of Section 42 of the NDPS Act, the officials reached at the place, where accused Tarun @ Kalu was searched after apprehension. It is pointed out that the said Tarun was holding a yellow coloured polythene carry bag in his right hand for which a notice in terms of Section 50 of the NDPS Act was given to him in the presence of the Duty Magistrate and the same was checked as per the guidelines of the Duty Magistrate so appointed by the Deputy Commissioner of Faridabad. Upon search, the said accused Tarun @ Kalu was found being in possession of glass bottle filled with 12 AVIL injections and 12 Buprenorphine IP LEEGESIC injections. The same being of commercial quantity, the said accused was apprehended.

During the course of investigation, a disclosure statement of accused Tarun @ Kalu was recorded. It is stated that he used to purchase the said injections from one Gautam and Rahul (petitioner herein) of Palwal.

Pursuant to the said disclosure, the petitioner was arrested. It is pointed out that no recovery consequent upon the disclosure was recovered from the petitioner and that he has been in custody since 24.06.2021. It is contended that trial has not yet been concluded. He further submits that AVIL does not fall in the schedule prescribed under the NDPS Act and, hence, the recovery of injection of AVIL is not relevant for the purpose of prosecution case. He further contends that the possession of 12 injections of Buprenorphine would not constitute an offence as being covered by proviso of Rule 66(2) of the NDPS Rules 1985 (hereinafter to be referred as 'Rules').

Notice of motion.

Mr. Kanwar Sanjiv Kumar AAG Haryana, who is present in the Court accepts notice on behalf of State of Haryana and submits that the petitioner is an accused in other cases registered against him and that as many as 3 cases are pending against the petitioner. It is pointed out that out of the three cases, two relate to NDPS Act. He submits that the petitioner, thus, suffers from criminal antecedents. It is also submitted that there are a total of 18 witnesses to be examined by the prosecution and that out of the said 18 witnesses, 12 witnesses have already been examined. Learned State counsel, however, could not controvert the fact that no recovery pursuant to the disclosure has been effected from the petitioner and that Section 25 of the Evidence Act renders a confessional statement made to the Police Officer while in custody as inadmissible evidence as per the judgments of the Hon'ble Supreme Court in the matter of *Tofan Singh Vs. State of Tamil Nadu reported as 2021(4) SCC 1*.

It is also not controverted that the only exception to Section 25 would be in the form of Section 27 and that in the absence of any recovery or disclosure of a fact, the same does not come into operation.

Controverting the objections raised by the learned State counsel, learned counsel appearing on behalf of the petitioner contends that the petitioner has been nominated as accused in the said cases on the strength of disclosure statements and that in the those cases, recovery has been effected in one case and no recovery has been effected in the other cases. He submits that in the case where no recovery has been effected, he has already been granted the concession of regular bail. He contends that insofar as, the FIR

registered under Section 302 IPC is concerned, the petitioner is not charged for commission of an offence under Section 302 IPC.

I have heard the learned counsel for the respective parties and have considered the rival submissions advanced by them.

Taking into consideration the state of the trial and since there is no recovery from the petitioner, the grant of bail in the other case based upon disclosure against the petitioner as well as the substantive period of custody undergone in the present case, I deem it appropriate to allow the instant petition and enlarge the petitioner on bail.

Accordingly, the petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrar, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witness(es) in any manner, directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of the available material.

30.05.2022
Ajay Goswami

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No