

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47217-2021
Reserved on 06.12.2021
Pronounced on: February 08, 2022

Rani ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Prateek Pandit, Advocate for the petitioner.
Mr. Harsimar Singh Sitta, AAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
130	15.06.2021	Sadar Kapurthala, District Kapurthala	21, 22, 29 of NDPS Act, 1985

1. The petitioner under arrest for violating the provisions as mentioned above of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail on the ground that the quantity of contraband is less than commercial and rigours of S. 37 of NDPS Act do not apply.
2. As per paragraph 12 of the bail application and the response of the State, the petitioner has following criminal history:

Sr. No.	FIR No.	Date	Offences	Police Station	Status
1.	230	2015	21 of NDPS Act	Kotwali, Kapurthala	Sentence to RI for two weeks already undergone
2.	114	2016	22 of NDPS Act	Kotwali, Kapurthala	On bail vide order dated 13.02.2016

3. Ld. Counsel for the petitioner places reliance upon the following judgments:
- a) Criminal Appeal No.1022 of 1997 decided on 26.02.2004 passed by Hon'ble Apex Court in case titled as "Sajan Abraham Vs. State of Kerala", RCR (Criminal) 137:2004(2)
 - b) CRM-M-5207 of 2014 decided on 04.11.2015 passed by this Court in case titled as "Saleem Mohd. Vs. State of Punjab", 2015 (25) RCR (Criminal) 816

He further contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the

petitioner and family.

4. Ld. Counsel appearing for State opposes the bail and submits that grant of bail encourages the drug peddlers, and the drug menace is spreading day by day.

REASONING:

5. The quantity allegedly involved is 12 injections of Buprenorphine 2 ML, 12 vials of Avil 10 ML and 10 grams of Heroin.

6. In Sajan Abraham v State of Kerala, (2004) 4 SCC 441, The case of the prosecution was that the convict was found in possession of 25 ampoules of manufactured drug , namely - Buprenorphine Hydrochloride (Tidigesic) alongwith three syringes when he was apprehended on the road. While dealing with the appeal against conviction, Hon'ble Supreme Court holds,

[3]. While allowing the review petition this Court observed that the appellant should have taken up a plea in the light of the decision of this Court in ***Hussain v. State of Kerala, 2000(4) RCR(Crl.) 348 (SC) : 2000(8) SCC 139*** in which the same article Buprenorphine Hydrochloride (Tidigesic) was found to be a psychotropic substance and the quantity which was found in possession of the accused was within the prescribed limit, being a small quantity. Consequently benefit of the same was granted to the accused in that case and he was acquitted. This Court felt, while allowing the review petition, that the appellants should be permitted to take up that contention in this case in order to prevent a miscarriage of justice. This Court noticed that the total quantity involved is 25 ampoules of Buprenorphine Hydrochloride (Tidigesic) of 2 ml. each. Counsel for the State of Kerala submitted that the limit of small quantity as per the Notification is 1 gm. Thus the total quantity seized from the appellant would fall within the limit of small quantity used for medicinal purpose. The appellant was permitted to file a petition seeking permission to raise additional ground in the appeal.

[7]. Rule 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter referred to as 'the NDPS Rules') provides as follows :-

"66. Possession, etc. of psychotropic substances. - (1) No person shall possess any psychotropic substance for any of the purpose covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person :

Provided that where such psychotropic substance is in possession of an individual for his personal medical use

the quantity thereof shall not exceed one hundred dosage units at a time.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession."

[8]. Sub-rule (2) therefore permits a person to keep in his possession for his personal medicinal use the psychotropic substance upto one hundred dosage units at a time.

[9]. In the instant case there is evidence on record which indicates that the appellant used the said drug and this is obvious from the deposition of the Investigating Officer, PW-3 as well as the deposition of his mother, DW.1. Moreover three syringes were also recovered from the appellant which also is indicative of the fact that the psychotropic substance recovered from him was for his personal consumption and not for trading purposes.

[12]. Learned counsel for the State submitted that unless the appellant held a permit granted under Rule 66 of the NDPS Rules, he cannot claim benefit under the provisions of that Rule. We find no substance in the argument because having regard to the provisions of Section 9 of the Narcotic Drugs And Psychotropic Substances Act under which the Rules have been framed, the Central Government is empowered by Rules to permit and regulate the matters mentioned therein. Rule 66 itself permits possession of psychotropic substance below a specified quantity and subject to the conditions stated therein. Thus if the possession of psychotropic substance is justified under the said Rule, no separate permit is required to be issued to the person possessing such psychotropic substance because the Rule itself permits possession of such psychotropic substance to the extent mentioned in the Rule and subject to the conditions laid down therein. Thus following the principle laid down in *Hussain v. State of Kerala* (supra) and having regard to the provisions of Rule 66 of the NDPS Rules read with Section 21 of the Narcotic Drugs And Psychotropic Substances Act, we are satisfied that the psychotropic substance namely, - Buprenorphine Hydrochloride (Tidigesic) found in possession of the appellant was not in breach of Rule 66 of the NDPS Rules and having regard to the fact that the same was for his personal consumption, no offence under Section 21 of the Narcotic Drugs And Psychotropic Substances Act is made out.

7. Given the accused's age and other factors peculiar to this case, it may be appropriate to afford the petitioner a final opportunity to course-correct. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail. Furthermore, a prima facie perusal of paragraph 3 of the bail petition reveals sufficient grounds for granting bail.

8. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has

failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In GudikantiNarasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

9. 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 elaborative 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.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

11. Given above, the petitioner 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 concerned Court/ Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must

satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioner before the Court.

12. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the “Court” and the “Arresting Officer” should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

13. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the concerned court a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposit may be made from any of the banks where the stake of the State is more than 50%, or any of the well-established and stable private banks, with the clause of automatic renewal of the principal and the interest reverting to the linked account.

14. The fixed deposit need not necessarily be made from the applicant's account. If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned court. If made online, its printout, countersigned by the accused, shall be given; and the depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest that it has been tendered as surety. Such information be sent either by e-mail or by post/courier about the fixed deposit, whether made on paper or in any other mode, along with its number and FIR number. After that, the applicant shall hand over such proof and endorsement to the concerned police station. Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, as the case may be. Subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes, if any, shall be endorsed/returned to the depositor.

15. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply to the investigator or the concerned court to substitute fixed deposit with surety bonds and vice-versa.

16. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any

change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

17. The petitioner to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

18. The petitioner 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 and the circumstances of the case, to dissuade them from disclosing such facts to the police, or the court, or to tamper with the evidence.

19. Within ten days of release from prison, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned above. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, call logs nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whichever is earlier.

20. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within ten days of release from prison 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.

21. During the trial's pendency, if the petitioner repeats 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.

22. Any Advocate for the petitioner and the Officer in whose presence the petitioner

puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

23. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioner finds 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 petitioner 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.

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

25. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

26. 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.

27. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

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

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

February 08, 2022
Sonia arora

Whether speaking/reasoned: Yes
Whether reportable: No.