



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

CRM-M-969-2025 (O&M)
Date of decision: 17.03.2025

Hardik Vinu Bhai Borad

....Petitioner

Versus

State of U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev Kumar, Advocate and
Ms, Aastha Mehta, Advocate
for the petitioner.

Mr. Manish Bansal, Public Prosecutor, U.T. Chandigarh.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 483 of the Bharatiya Bagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') seeking regular bail for the petitioner in the case stemming from FIR No.62 dated 29.05.2024 registered under Sections 21,22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act') at Police Station Sector 26, Chandigarh.

2. Briefly, the facts, as alleged, are that a police party was patrolling the area of Babu Dham Colony, Sector 26, Chandigarh when Rakesh Kumar was seen coming out of Ganesh Studio, carrying a cardboard carton. On seeing the police, he got flustered and went back inside the studio. Seeing his suspicious conduct, the police party chased him and caught hold of the carton. On searching the same, 23 bottles of cough syrup labelled as Recodex-T, containing the salts Triprolidine Hydrochloride and Codeine Phosphate, were recovered. On further inspection, a total of 14 cartons of cough syrup were



recovered from the studio. The Drug Inspector verified the same and revealed that a total of 1423 bottles of cough syrup were recovered from the spot.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner the proprietor of Riya Biocare Inc., which is duly licensed to sell, stock, exhibit, offer for sale or distribute whole sale drugs, other than those specified in Schedule C, C(1) and X of the Drugs and Cosmetics Rules, 1945 (Annexure P-3). The petitioner has been in business with co-accused Rakesh Kumar, who runs a chemist shop under a valid licence in the name of M/s Rakesh Medicos, since the year 2021. In the month of April, 2023, Rakesh Kumar telephonically placed an order with the firm of the petitioner on behalf of M/s Maa Shakumbhri Chemists and shared its licence via WhatsApp (Annexure P-6 and P-7). In fact, the petitioner had duly generated consignment bills and the material was sent through proper transportation channel. He further argues that the petitioner has been kept in custody since 20.11.2024, when he came to join the investigation, without any concrete evidence. A bare perusal of the FIR(supra) would indicate that neither any specific allegations have been levelled against the petitioner nor any recovery was effected from him. Further, the ingredients to attract Section 29 of the NDPS Act are not made out either. The petitioner has fully co-operated with the investigating agency and provided all necessary documents as well, as such he deserves the concession of regular bail. Lastly, learned counsel has averred that a drug shall not be classified as a "Manufactured Drug" and therefore will not be considered a prohibited substance under Section 10 of the Act if it meets the following conditions: (i) it contains no more than 100 milligrams of Methyl Morphine, commonly known as Codeine, per dosage unit; (ii) Codeine in the drug is combined with one or more other ingredients; (iii) the concentration of Codeine



does not exceed 2.5% in undivided formulations; and (iv) the drug has an established therapeutic use. Reliance in this regard is placed on the judgment rendered by the Himachal Pradesh High Court in ***Raghav Saini vs. State of Himachal Pradesh 2023(3) SimLC 1772.***

4. *Per contra*, learned State counsel opposes the prayer of the petitioner and submits that Dalip Kumar and Rajesh Kumar, proprietors of M/s Maa Shakumbri Chemists were joined in the investigation, who disclosed that they had not placed any order of 1423 bottles of the said cough syrup. In fact, they had shut down their shop in the month of December, 2011 and sold their entire stock to co-accused Rakesh Kumar, along with their licence documents and official stamp. The petitioner had also suffered a disclosure statement admitting to selling the cough syrup to co-accused Rakesh Kumar, under the license of M/s Maa Shakumbri Chemists, without verifying the same, as the sale was made on the basis of WhatsApp chats only. The petitioner being a manufacturer and supplier of medicines was duty bound to supply the same after proper verification, which was intentionally not done in the present case. Furthermore, it is argued that the petitioner is the main culprit and is a direct beneficiary since there are multiple transactions whereby various amounts have been credited in the bank account of the company of the petitioner.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that 1423 bottles of cough syrup, 100 ml each, containing the salt codeine phosphate was recovered from co-accused Rakesh Kumar and Pramod Kumar. The same was sold to Rakesh Kumar by the petitioner in the name of M/s Maa Shakumbri Chemists. The petitioner accepted the order and generated bills merely on the basis of their chat on WhatsApp. However, the status report dated 17.03.2025 submitted by the



learned State counsel indicates that the proprietors of M/s Maa Shakumbri Chemists had sold their entire medicine stock to Rakesh Kumar as they had shut their shop in the month of December, 2021. Moreover, Rakesh Kumar had failed to return their company's license and official stamp, which were misused by him in committing the instant offence.

6. In order to justly adjudicate the present matter, a study of Section 29 of the NDPS Act is warranted, which reads as follows:

Section 29. Punishment for abetment and criminal conspiracy.

- (1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.*
- (2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--*
 - (a) would constitute an offence if committed within India; or*
 - (b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.*

In order to attract the offence under Section 29 of the NDPS Act, it is vital that *prima facie* evidence indicating complicity is brought to the fore. Since, admittedly, it was the petitioner who sold the contraband to the co-accused, his nexus with the alleged offence stands adequately established.

7. Further still, a two Judge bench of the Hon'ble Supreme Court in ***Intelligence Officer, Thiruvananthapuram vs. Naushad K.K. and others*** 2023(1) CriCC 45 has held that the quantity of neutral substance cannot be ignored while ascertaining quantity of the contraband. The relevant part is reproduced below:



*“3. There is no cavil to the issue that the judicial pronouncement now settles the issue in "**Hira Singh & Anr. v. Union of India & Anr.**" reported as 2020 SCC Online SC 382 opining that the decision of this Court relied upon in the impugned judgement- "**E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau, (2008) 5 SCC 161**" is no more good law and in determining as to what is the quantity, the neutral substance quantity is not be ignored.”*

As such, the recovery made falls under the purview of ‘commercial quantity’ attracting the bar under Section 37 of the NDPS Act.

8. Considering the gravity of the allegations, the huge quantity of contraband admittedly sold by the petitioner and the statutory bar under Section 37 of the NDPS Act, which requires the petitioner to satisfy twin conditions for the grant of bail, this Court is not inclined to grant him the concession of regular bail.

9. Accordingly, in absence of any cogent evidence to disbelieve the case of the prosecution, the present petition is dismissed. However, nothing observed hereinabove shall be construed as expression of an opinion by this Court on the merits of this case, lest it may prejudice the investigation.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

17.03.2025

Neha

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