

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

CRM-M-11031 of 2015 (O&M)

Date of Decision: 07.10.2015

Ravi @ Anil Chauhan

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr. Dharmender Bhan, Advocate and
Mr. BD Sharma, Advocate for the petitioner

Ms. Reeta Kohli, Addl. AG Punjab with
Mr. Vaibhav Sharma, DAG Punjab

SURYA KANT, J.

(1) The petitioner seeks his enlargement on bail in the case
FIR No.56 dated 15.05.2013 U/S 379/411/473/468/471/120-B,
21/22/25-A/27/29 of NDPS Act, 1985 & 25 of Arms Act registered at
Police Station Banur, District Patiala

(2) As per the FIR version, the SHO Police Station Banur,
District Patiala along with other police officials was on patrol duty
and when they were at Banno Bhai Chowk, Banur, a secret
information was received that Satinder Dhama s/o Ram Roshan
Dhama r/o #1669, Sector 15, Panchkula, Baljinder Singh @ Sonu
resident of Amritsar, who along with other members of the gang
were involved in stealing vehicles which are used for supplying
ICE, Pseudoephedrine and other intoxicating material with forged

‘number plates’, were traveling on that day in a Verna car affixing fake number plate HR-26AJ-1019 from Amritsar to Delhi via Kharar and would be carrying the intoxicants. Based upon that secret information, the FIR was registered under various provisions of IPC and NDPS Act.

(3) The police party intercepted the above-stated Verna car at about 2.10 pm near the Tax Barrier at Banur and Satinder Dhama who was driving the car was nabbed and from the dash board of the car, narcotic substance ICE (Methamphetamine) lying in a plastic envelope was allegedly recovered. Satinder Dhama was arrested and during interrogation he is said to have named Baljinder Singh @ Sonu as his partner in supplying ICE (Methamphetamine) and Pseudoephedrine in different cities of Punjab. Baljinder Singh @ Sonu was also joined in the investigation and arrested.

(4) The petitioner though is not named in the above-mentioned FIR but as per the charge-sheet filed under Section 173 CrPC (P2), it is alleged that an organized gang was actively involved in drug trafficking and after the arrest of one or two accused, they revealed the names of other members and associates. It was found that Jagdish Singh @ Bhola is the kingpin of drug mafia. The petitioner was also actively involved as an associate of Jagdish Singh @ Bhola and was instrumental in the preparation of

ICE from the precursors procured from their associates like Jagjit Singh Chahal and Paramjit Singh Chahal.

(5) The petitioner was arrested on 29.01.2014 in another case FIR No.241 dated 07.12.2013 under Section 21/22/25-A/61/85 NDPS Act read with various provisions of IPC registered at Police Station, Patiala. As per the allegations in that FIR, 10kg Pseudoephedrine and 750gm intoxicating powder was recovered from the petitioner.

(6) Meanwhile, his name surfaced in this case also hence production warrants were obtained and after interrogation, the petitioner was arrested in this case as well.

(7) The petitioner was meanwhile granted bail by this Court in FIR No.241 dated 07.12.2013 vide order dated 21.01.2015 (P1).

(8) The petitioner seeks bail in this case as well *inter alia* on the following grounds:-

- (i) He is not named in the FIR;
- (ii) No intoxicant material has been recovered from him in this case as he was already in custody in FIR No.241 dated 07.12.2013;
- (iii) The petitioner has been falsely implicated on the basis of alleged disclosure statement made by a co-accused;
- (iv) There is no proof to establish his involvement even as per the charge-sheet;

- (v) The alleged disclosure statement made by the petitioner is fake and fabricated;
- (vi) The petitioner is in custody from last more than one year and eight months;
- (vii) The trial is yet to commence and will take time;
- (viii) In the absence of any recovery, the rigors of Section 37 of NDPS Act are not attracted.

(9) Learned Addl. AG Punjab strongly opposed the petitioner's prayer. She branded the petitioner a habitual offender under the NDPS Act and an active member of the organized gang. One of the oldest matter regarding petitioner's involvement in NDPS cases is extensively disclosed in an order dated 25.04.2002 passed by the Directorate of Revenue Intelligence, Mumbai Zonal Unit, while arresting him on 24.04.2002 after recovering 222.699 kg of Mandrax tablets. The petitioner and his two associates were found involved in yet another NDPS case registered at Jodhpur (Rajasthan) by the Custom authorities. The petitioner is alleged to be a professional drug traffickeer who has links in India, Nepal and beyond that. The Directorate of Revenue Intelligence, Mumbai revealed that the petitioner along with his co-accused Rajesh Shyam Behari Saraf and Aniruddha Harishchandra Chavan have been manufacturing methaqualone powder/Mandrax in the premises of M/s Bilara Cement Factory at Bilara, Jodhpur.

(10) According to State counsel the petitioner and Jagdish Singh @ Bhola are closely associated and Bhola was seen in the petitioner's company in Goa.

(11) Having heard learned counsel for the parties, it appears that the petitioner does not deserve the concession of bail at this stage. We say so for the reasons that as per his past record, he was found involved in the NDPS cases in the States of Maharashtra, Rajasthan and he is said to have come into contacts with Punjab counterparts also. There is every possibility of his re-entering the world of narcotics, if released on bail.

(12) Since some of the grounds like (a) non-applicability of Section 37(1)(b)(ii) of the NDPS Act; (b) the supremacy of 'liberty' guaranteed under Article 21 of the Constitution; and (c) false implication etc. have been pressed into aid by all the petitioners in these connected bail matters, we treat this petition as the lead case.

When and where Section 37 of NDPS Act would apply?

(13) The contention that Section 37 of NDPS Act would not apply unless the accused has been found in actual 'physical' conscious possession of the illicit drug of 'commercial quantity', is wholly misdirected and misconceived. The said provision opens up with a non-obstante clause and irrespective of the broader view taken under the Code of Criminal Procedure, it mandates that a person accused of an offence punishable under Section 19, 24 or 27- A "and also" for offences involving 'commercial quantity' is not

entitled to bail unless the Court is satisfied that there are reasonable grounds to believe that (a) he is not guilty of such offence; and (b) he is not likely to commit any offence while on bail.

(14) The mandatory conditions prescribed in sub-clause (ii) are applicable equally in a case where the person is accused of an offence involving 'commercial quantity'. The expression "and also..." bring such person at par with a violator of Sections 19, 24 or 27-A to attract these conditions.

(15) The expression "involve" is of wide amplitude and it means to connect with something as a natural or logical consequence or effect. Its applicability cannot be narrowed down only to those cases where the 'commercial quantity' is physically recovered from one's conscious possession. The legislature has nowhere excluded such proxy offenders who are accused of committing the offence of 'making attempt' (Section 28) or 'abetment' and 'criminal conspiracy' (Section 29) etc., provided that the offence, the commission whereof is attempted, abetted or conspired etc. pertains to 'commercial quantity'. The twin conditions of sub-clause (ii) referred to above, would surely be attracted in such a case as well.

(16) In **Union of India v. Rattan Mallik @ Habul (2009) 2 SCC 624**, the Supreme Court has held that while considering an application for bail with reference to Section 37 of the NDPS Act, it is not desirable to weigh the evidence meticulously to arrive at a

positive finding as to whether or not the accused has committed offence but his plea that ‘nothing has been found from his possession’ cannot constitute the ‘satisfaction’ of the Court to believe that he was not guilty of the offences. In **Mohan Lal vs. State of Rajasthan (2015) 6 SCC 222**, the Apex Court while explaining the ‘concept of possession’ has ruled that “personal knowledge as to the existence of the "chattel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others”.

(17) The legislative intent to make an exception to the principle of ‘bail the rule and jail the exception’ is further fortified by sub-section (2) of Section 37 which says that the limitation on granting of bail as specified in clause (b) of sub-section (1) are in addition to the limitations prescribed under CrPC or any other law on granting of bail.

The Scope of ‘Liberty’:

(18) Having held that, we may also briefly explain the nature of two conditions contained in clause (b) of sub-section (1) of Section 37, namely, (a) there are reasonable grounds to believe that the

accused is not guilty of such offence; (b) he is not likely to commit any offence while on bail.

(19) True it is that liberty is the first-rate constituent of one's dignified life and is the ethical code of civility and orderly society; Liberty is indeed a salutary human right. It is a non-negotiable fundamental right guaranteed under Article 21 of our Constitution: Liberty is antagonist to suppression. It is also complimentary to the rule of law: Liberty vociferously promotes numerous other fundamental and human rights like freedom of speech and expression.

(20) So much invaluable is liberty, yet it is not absolute. It comes at a price and is conditional. It embraces a person if he is a law abiding citizen. Liberty in that sense is a mutually agreed and reciprocable right. The one who goes straight is entitled to this priceless gift but the one who goes stray surely loses it and pay the price. Equal respect for each other's rights is the *sine qua non* to enjoy 'liberty'.

(21) Hon'ble Supreme Court, in a catena of decisions, more recently in **Neeru Yadav vs. State of UP, (2014) 14 Scale 59**, has very eloquently and forcefully recognized the right of liberty within the meaning of Article 21 of the Constitution as a priceless treasure for a human being. In fact, 'liberty' has been held to be a 'basic natural right'.

(22) A person accused of committing offence falling under clause (b) of sub-section (1) of Section 37 of the NDPS Act is obviously on the wrong side of law and he cannot complain that notwithstanding the deterrent legislative policy of such Act, he is entitled to enjoy 'liberty' under Article 21 of the Constitution.

When can the Court be satisfied that there are reasonable grounds to believe that the person seeking bail is not guilty of such offence?

(23) While considering an application for bail under the Act, the Court is not expected to return a finding on the 'guilt' or 'innocence' of an accused. It is not expedient to comment on the merits of the prosecution case as it can cause devastating effects on the final adjudication. An appellate Court while considering the bail plea at post-conviction stage has the advantage of scanning the evidence to form its tentative opinion. But for the trial court, it is a tedious task, more-so when the prosecution is yet to lead its evidence. The material relevant for consideration at that stage thus can be:-

- (i) the allegations made in the FIR;
- (ii) the profile of the witnesses cited at the first instance;
- (iii) the statements of witnesses, if any, recorded under Section 161 or 164 CrPC;
- (iv) the report of the Forensic Science Laboratory;
- (v) the report under Section 174 CrPC, if submitted;
- (vi) Official records or documents, if any.

(24) In a case where the prosecution has led its evidence in part, the Court has to tread very carefully and ensure no aspersions on the merits of the case even if it is inclined to believe that there are reasonable grounds that the accused is not guilty of the offence.

(25) The golden principle to be followed is as laid down by the Supreme Court in (i) **Union of India vs. Shiv Shanker Kesari (2007) 7 SCC 798**; (ii) **Union of India v. Rattan Mallik @ Habul (2009) 2 SCC 624**, namely, that (i) reasonable grounds means something more than *prima facie* grounds; (ii) there are substantial probable causes for believing that the accused may not be guilty of offence he is charged with; (iii) there are facts and circumstances sufficient in themselves to justify the satisfaction of the Court that the accused is not guilty of the alleged offence; and (iv) that the satisfaction of the Court is only for the limited purpose of releasing the accused on bail.

How to determine that the accused is not likely to commit any offence while on bail?

(26) As regards the second condition that a person accused of the offences mentioned in sub-clause (b) is not likely to repeat himself, if released on bail, the first and foremost consideration will be his past track record. If the person has the history of involvement in illicit drug cases, the presumption would be that in all probabilities, he will re-connect himself and resume such illegal activities. On the contrary, if a person has no such shady history

and has his roots in the society; his family has a decent reputation; if his day to day affairs can be well controlled by his family or peers and his activities are not beyond the reach of surveillance, coupled with several other attending circumstances on case-to-case basis, the Court can form its satisfaction that the suspect is not likely to commit any such offence while on bail. Similarly, the nature of allegations leveled against the accused and the manner he has been connected with the case can also assist the Court in view-formation. If a person is found in conscious possession of the contraband of 'commercial quantity' and the allegations do indicate his involvement in the drug trafficking, nothing else is required to form a negative opinion. There can be cases of 'incidental' accusation against the suspect, he being an employee, domestic help, driver or in such fiduciary relationship that the dominator could influence and push him into illegal activity without his informed knowledge. The Court in such like situations can justifiably liberate him pending trial. This has to be, however, always borne in mind that the conditions contained in sub-clause (ii) of clause (b) are neither empty formalities nor ceremonial. Further, if two views are possible, the one leaning towards the enforcement of liberty must be followed.

(27) We may hasten to add at this stage that some of the learned Single Judges have expressed nearly conflicting views in the bail matters arising out of the bunch of FIRs registered under

NDPS Act, known as the drug scam cases, which have been now clubbed together and placed before this Division Bench. One learned Single Judge has granted bail in wholesome without noticing the allegations of organized operations of drug racketeers or the legislative scheme of the NDPS Act including the stringent conditions on bail imposed under its Section 37. The other learned Judge has declined bail applying Section 37 even in those cases where it was admittedly not attracted. With utmost humility and respect at our command, both the views are erroneous in law and cannot withstand the settled legal proposition. None of these orders can be treated as persuasive or binding precedents.

(28) In the light of the above discussion and on consideration of the facts and circumstances of the case in hand, it emerges that (i) though no recovery was effected from the petitioner in the case FIR No.56 dated 15.05.2013 but the said case pertains to an offence involving 'commercial quantity' hence Section 37 would be attracted; (ii) it is difficult and premature to believe that the petitioner is not guilty of the offence, for he is alleged to be an active member of drug-mafia; (iii) Owing to his past conduct, namely, involvement in NDPS cases in the States of Maharashtra and Rajasthan, it is not possible for this Court to be satisfied that he is not likely to commit any offence while on bail; (iv) the charge-sheet has since been filed and the case is ripe for prosecution evidence; (v) this Court is inclined to issue comprehensive

directions for speedier disposal of all drug trafficking cases which are inter-connected, in a time-bound manner.

(29) For the reasons afore-stated, however, without expressing any views on merits least it prejudices either party, the bail application is dismissed.

(Surya Kant)
Judge

07.10.2015

vishal shonkar

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(P.B. Bajanthri)
Judge