

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**CRM-M-13737 of 2018
Date of Decision: 3.7.2018.**

Partap Singh

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Amaninder Singh Sekhon, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

RAJ SHEKHAR ATTRI, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.48 dated 10.4.2017 registered for the offences punishable under Sections 22 of Narcotic Drugs & Pscyhotropic Substance Act at Police Station City/Kotwali, Sri Muktsar Sahib.

Heard.

The contraband recovered in the case falls within commercial quantity, therefore, provisions of Section 37 of NDPS Act are applicable.

In a recent judgment Hon'ble the Supreme Court in case **Satpal Singh v. State of Punjab**, 2018 AIR (SCW) 2011 has discussed in detail in paras No.3 and 4 with regard to bail in commercial quantity of the contraband which read as under:-

“3. Section 37 of the NDPS Act reads as follows :-

“Offences to be cognizable and non-bailable – (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]” (Emphasis supplied)

4. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under the Cr.P.C or any other law in force on the grant of bail. In view of the seriousness of the offence, the law makers have consciously put such stringent restrictions on the discretion available to the court while considering

application for release of a person on bail.”

It has been argued that there is violation of Section 50 of NDPS Act and to substantiate this plea, reliance has been placed on judgment of Hon'ble Supreme Court in **Arif Khan @ Agha Khan v. State of Uttarakhand**; 2018 AIR (SC) 2123.

No ground is made out for grant of regular bail to the petitioner, as such, the same is dismissed. However, learned trial Court is directed to expedite the trial and consider the law laid down in Arif Khan's case (supra).

July 3, 2018

Paritosh Kumar

**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No