

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 16409 of 2018 (O&M)

Date of decision : 29.5.2018

...

Vicky

.....Petitioner

vs.

State of U.T. , Chandigarh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Divyjot Singh, Advocate for the petitioner

Mr. Y.S. Rathore, Advocate for U.T., Chandigarh.

...

H. S. Madaan, J.

This petition for regular bail has been filed by petitioner Vicky, an accused in FIR No.125 dated 5.7.2017 for an offence under Section 20 of the NDPS Act, registered at Police Station Maloya, U.T., Chandigarh, on the allegations that 20 injections Buprenorphine 2 ml each and 20 injections Pheniramine Maleate 10 ml each were recovered from his possession. He was arrested in this case.

He had moved an application for grant of regular bail in the Court below, but the same was dismissed by Additional Sessions Judge, Chandigarh, vide order dated 7.11.2017, as such he has approached this Court seeking similar relief, which request is being opposed by the State counsel.

I have heard learned counsel for the petitioner, learned counsel for U.T., Chandigarh, besides going through the record.

Admittedly, recovery of contraband effected from the accused amounts to commercial quantity, which attracts bar of Section 37 of the NDPS Act., which reads as under:-

“1[37. 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 2[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 sub-section (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.]”

It being so, the petition is doomed for failure for that very reason. Though learned counsel for the petitioner has submitted that the petitioner is innocent and has not committed any offence. The police officials had taken into custody the petitioner, his mother Kamli, brothers Sawariya, Deepu and his cousin brother Shambu, so as to grab the gold ornaments and cash in lacs, which the police had found during raid at the residential house of the petitioner and the petitioner and his family members have been involved in false cases.

However, I find that while deciding as to whether the petitioner is entitled to regular bail or not, this court is not to hold a mini trial, so as to determine whether the petitioner is innocent or guilty. That would be seen during regular trial by the court concerned. This court is not to look into the merits of the case minutely at this stage. Considerations for grant of regular bail at this stage are quite different i.e. if released on bail, chances of petitioner's absconding or regularly appearing in the Court, the chances of his trying to tamper with the prosecution evidence by giving threats or inducement to the prosecution witnesses or not indulging in such type of acts. The seriousness of offence, age, previous antecedents of the accused, chances of his taking to the path of crime again if grant bail etc., and adopting the said yardstick and bar of Section 37 of the NDPS Act, I find that no case for grant of regular bail to the petitioner is made out.

As regards the authorities, referred to by the counsel for the petitioner, as mentioned below

- 1. Sonu vs. State of Punjab 2017 (4) Law Herald 3116**
- 2. Jaipal vs. U.T. Of Chandigarh, in CRM-M-5245 of 2018 decided on 25.4.2018 and**
- 3. Dhiraj Sharma vs. State of U.T., Chandigarh in CRM-M-42049-2017 decided on 19.3.2018**

These authorities do not come to his help due to different facts and circumstances and further in none of those authorities bar of Section 37 of the NDPS Act has been discussed, which is to be taken into consideration while deciding a petition for regular bail in a case under the NDPS Act.

Finding no merit in the petition, the same stands dismissed.

29.5.2018
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No