

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

**Crl. Misc. No.M-16689 of 2018 (O&M)  
Date of Decision: September 07, 2018.**

Krishan Lal @ Ricky

**.....PETITIONER(s).**

**VERSUS**

State of Punjab

**.....RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present : Mr. Jitender Singh Dadwal, Advocate  
for the petitioner (s).

Mr. Pawan Sharda, Sr. DAG, Punjab.

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**SURINDER GUPTA, 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. 167 dated 18.12.2017 registered for the offences punishable under Sections 22 of Narcotic Drugs and Psychotropic Substances Act, 1985(for short-NDPS Act), at Police Station Moti Nagar, District Ludhiana.

Heard.

As per case of the prosecution, petitioner was apprehended by a police party headed by Sub Inspector Harbans Singh of Police Station Moti Nagar, Ludhiana and recovery of 500 grams of heroin was effected from his possession.

Learned counsel for the petitioner has sought regular bail for the petitioner as he was never found involved in sale, purchase, consumption or transport of contraband earlier and possibility of his false implication cannot be ruled out. Referring to the provisions of Section 37

NDPS Act, which bar the grant of bail in case of commercial quantity of contraband, he has argued that a Co-ordinate Bench of this Court in case of ***Ankush Kumar @ Sonu Vs. State of Punjab (CRM-M-30643-2018 decided on 09.08.2018)***, while allowing regular bail in case of commercial quantity of contraband, has observed that this Court does not have any reasonable ground to be satisfied that accused is not likely to commit any offence after his release on bail. While granting the bail, prophesy is not the domain of the Court.

Learned State counsel while opposing the bail application, has argued that the recovery from the petitioner was of commercial quantity of contraband and Section 37 NDPS Act creates a specific bar for release on bail for the offence involving commercial quantity of contraband. Sample of contraband recovered from the petitioner in this case was sent to Forensic Science Laboratory and as per the report, it was found to be that of heroin. The society is grappling with the menace of excessive use of narcotics by the youth, which is not only spoiling the ethics in the society but also creating law and order problem. Release of petitioner on bail will compound the problem which the society is already facing.

Admittedly, recovery effected from the petitioner is of commercial quantity of contraband and Section 37 NDPS Act creates a specific bar for granting of bail in such cases. The bail can be allowed to the petitioner on recording the finding (i) that there are reasonable grounds that he is not guilty of such offence and (ii) he is not likely to commit such offence while on bail.

While this is a debatable issue and may have substance that

prophecy is not domain of the Court but keeping in view the fact that specific terms have been laid down under the NDPS Act which the Legislature to its wisdom has framed, I find that there is no route to escape these provisions till these are amended, abolished or set aside. Even in the case of *Ankush Kumar @ Sonu Vs. State of Punjab(supra)*, learned Co-ordinate bench has taken note of the fact that “this Court cannot pronounce upon the constitutional validity of these provisions.”

The mere fact that a person is a first offender, is no ground to record a finding that “there are reasonable grounds for believing that he is not guilty of such offence.” Such inference, if drawn, may also result in absolving a person from whom heavy quantity or a truck load of contraband is recovered for the first time. This will not only be against the spirit of legislation but also convey wrong signal to the drug lords involved in drug trafficking and prompt them to hire the services of a new carrier every time they have to transport or sell the contraband. Such a view if taken will not only be counter productive but also spread this menace in society by trapping/alluring/attracting the youth to this trade.

Keeping in view the fact that recovery effected from the petitioner is of commercial quantity of contraband, I find no reason to grant regular bail to the petitioner. This petition has no merits.

Dismissed.

**September 07, 2018**  
*Sachin M.*

**( SURINDER GUPTA )**  
**JUDGE**

***Whether speaking/reasoned:*** ***Yes/No***

***Whether Reportable:*** ***Yes/No***