

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

**CRM M-27777 of 2017**

**Date of decision :26.02.2018**

State of Haryana

...Petitioner

V/s

Surjit Singh

....Respondent

**BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA**

Present: Mr. Tanuj Sharma, AAG Haryana.

Mr. Nonish Kumar, Advocate for the respondent.

**RAJAN GUPTA J.**

Present petition has been preferred by State of Haryana seeking cancellation of bail granted to the accused by the court at Kurukshetra. It has urged on behalf of the State that in the incident 9 kgs of opium was recovered from the accused. The court granted bail ignoring the provisions of section 37 of the NDPS Act. Reliance has been placed on judgment reported in Appeal (Criminal) No. 349 of 2004 titled as Narcotics Control Bureau vs. Dilip Pralhad Namade decided on 18.03.2014. Prayer for cancellation of bail was opposed by the accused (respondent herein).

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Police rounded up one stationary truck bearing registration no. HR69-3034 and a car bearing registration no. HR41C-0404 parked on the left side of the road at Pehowa Road Kamada turn. On search of the car, 9

kgs of opium was recovered. Accused Kartar Singh was driving the said

vehicle and co-accused Surjeet Singh was sitting next to him. The bag in question was placed between the seats of these two persons. Investigation ensued thereafter and police found both the accused guilty. Challan was presented against them. Surjit Singh moved an application before the trial court for grant of bail. Same was granted by the trial court without adverting to provision of section 37 of the Act. Thereafter, an application under section 439(2) Cr.P.C. was moved before the same court for cancellation of bail. However, it was rejected by referring to various judgments regarding general principles governing cancellation of bail under section 439(2) Cr.P.C. The main ground taken by the State about applicability of section 37 was not dealt with. It was merely stated that in the absence of chemical examination report the accused was entitled to be released on bail. Law is well settled in judgment reported as *Inderjeet Singh @ Laddi vs. State of Punjab (2014) 3 RCR (Crl.) 953* that in case FSL report does not accompany the challan the accused can be released on interim bail. However, applicability of section 37 of the Act is not excluded in any circumstances. In similar circumstances, Hon'ble Supreme court in judgment report as Narcotics Control Bureau's case (supra) held as under:-

*“As observed by this Court in Union of India vs. Thamisharasi & ors. (JT 1995(4) SC 253) clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are (1) an opportunity to the public prosecutor to oppose the bail application and (2) satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from*

*the grant of opportunity to the public prosecutor, the other twin conditions which really have relevance so far the present accused-respondent is concerned, are (1) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based for reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence and he is not likely to commit any offence while on bail. This nature of embargo seems to have been envisaged keeping in view the deleterious nature of the offence, necessitates of public interest and the normal tendencies of the persons involved in such network to pursue their activities with greater vigour and make hay when, at large. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37 and transgressed the limitations statutorily imposed in allowing bail. A bare reading of the impugned judgment shows that the scope and ambit of Section 37 of the NDPS Act was not kept in view by the High Court. Mere non-compliance of the order passed for supply of copies, if any, cannot as in the instant case entitle an accused to get bail notwithstanding prohibitions contained in Section 37. "*

In view of above, I am of the considered view that the order granting bail to the accused Surjit Singh is unsustainable in law. Same is hereby set-aside. During the pendency of bail application, comments of the officer were also sought. Same have been received and shall be dealt with

administratively. Petition is, thus, allowed. Trial court to do the needful in light of cancellation of bail of the accused.

February 26, 2018

*Ajay*

(RAJAN GUPTA)  
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No