

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No.M-29969 of 2018 (O&M)

Date of decision : 24.07.2018

Gurdeep Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Gopal Sharma, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

RAJ SHEKHAR ATTRI, J.(Oral)

The petitioner has preferred the instant petition filed under Section 439 Cr.P.C., for grant of regular bail to the petitioner pending trial in case FIR No.62 dated 30.05.2015 under Section 22 of NDPS Act, registered at Police Station Khamano.

Learned State counsel has submitted that FSL report has been received.

Learned counsel for the parties have been heard and the case paperbook has been perused.

“Undisputedly, the quantity of contraband involved in the present case of Narcotic Drugs & Psychotropic Substances is commercial quantity. Once the quantity of contraband involved is commercial quantity, the mandate of Section 37 of NDPS Act comes into operation which reads as follows:-

"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 offences under Section 19 or Section 24 or Section 27-A 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."

Thus, every offence punishable under the NDPS Act shall be cognizable. The power to grant bail to a person alleged to have committed offence containing commercial quantity of contraband is subject to the restriction prescribed by sub-clause (b) of Sub-section (1) of Section 37 of the NDPS Act, 1985. First of all, an opportunity to the Public Prosecutor has to be given to oppose the application for release of the accused. The other twin conditions are (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the offence alleged to have been committed; (ii) he is not likely to commit any offence while on bail. Thus, recording of satisfaction on both aspects is sine qua non to grant bail in respect of offence punishable under Section 19 or Section 24 or Section 27-A and also offence involving commercial quantity.

Section 37(2) further provides that the limitations on granting

bail specified in sub-clause (b) of Sub-section (1) are in addition to the limitation under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. As it appears from the language of Section 37(1)(b), the Court must adopt a negative attitude towards bail.

At this juncture it will be profitable to refer to some of the decisions of the Hon'ble Supreme Court.

The Hon'ble Supreme Court in the case of **Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798** held as under :

“As the provision itself provides that no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable."

“In Stroud's Judicial Dictionary, 4th Edn., p.-2258 states that it would be unreasonable to expect an exact definition of the

word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he think. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."

*(See **Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar** (SCC p. 504, para 7) and **Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.***

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11.The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12.Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion."

The Hon'ble Supreme Court in the case of **Union of India v.**

Rattan Mallik @ Habul, (2009) 42 OCR (SC) 697, held as under:

"The broad principles which should weigh with the Court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder,

including an application for grant of bail, these provisions cannot be ignored while dealing with such an application."

The accusation in the present case is with regard to the fourth factor namely, commercial quantity. Be that as it may, once the public prosecutor opposes the application for bail to a person accused of the enumerated offences under section 37 of the NDPS Act, in case, the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; (2) that person is not likely to commit any offence while on bail.

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 para Nos.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 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.]” (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.”

The alleged recovery of 720 tablets of lomotil were effected from the petitioner.

The above said recovery is construed as commercial in nature.

To the mind of this Court, the petitioner has failed to fulfil the conditions, as laid down under Section 37 of the NDPS Act, therefore, he is not entitled to the benefit of regular bail.

However, trial Court is directed to expedite the trial.

Accordingly, the instant petition stands dismissed.

24.07.2018
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(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No