

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-38041-2018

Date of Decision: 14.11.2018

Sahab Ram

....Petitioner

VERSUS

State of Haryana

....Respondent

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

Present: Dr. Govinder Brar, Advocate
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana. .

RAJ SHEKHAR ATTRI, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure (in short, "Cr.P.C".) for grant of regular bail to the petitioner in case FIR No.207 dated 10.8.2016 registered for the offences punishable under Sections 17 of NDPS Act at Police Station Ellenabad, District Sirsa.

Heard.

Learned counsel for petitioner submits that 7.8 kilograms of opium was recovered in the presence of Deputy Superintendent of Police but no sample was drawn and it is surprising that how Forensic Science Laboratory has submitted its report.

A bare perusal of the record transpires that sample was drawn before the learned Magistrate as mentioned in the order dated 11.8.2016 passed under Section 52-A (2) of NDPS Act.

Learned Counsel for the petitioner further argues that the vehicle which he was driving was not registered in the name of the petitioner nor in the name of any family members of the petitioner but this is not ground for grant of regular bail.

It has been further argued that there is an affidavit of Prithvi Singh selling the aforesaid vehicle bearing Jeep No.HR-20R-0460 in favour of Hanuman Singh son of Sahab Singh and learned State counsel states that Hanuman Singh is the son of the petitioner. However, the petitioner was found driving the said vehicle, therefore, question of ownership does not arise. The recovery in this case falls within the commercial quantity of the contraband and, therefore, provisions of Section 37 of NDPS Act will apply.

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 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.”

Keeping in view the above, the petitioner is not entitled to the benefit of regular bail.

Dismissed.

November 14, 2018

Paritosh Kumar

**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No