

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-2263-2019

Date of Decision: 22.2.2019

Rajan Sharma

....Petitioner

VERSUS

State of Union Territory, Chandigarh.

....Respondent

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

Present: Mr. Vijay Lath, Advocate
for the petitioner.

Mr. Lalit K. Gupta, Addl. P.P. UT Chandigarh.

RAJ SHEKHAR ATTRI, J.

The present 2nd 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.20 dated 27.1.2018 registered for the offences punishable under Section 22 of Narcotic Drugs & Psychotropic Substance Act (for short, “NDPS”) at Police Station Maloya, Union Territory, Chandigarh.

Heard.

This court vide judgment dated 25.7.2018 passed in CRM-M-17694-2018 dismissed the first bail application of the petitioner by passing a detailed order.

Admittedly, the recovery effected from the petitioner falls within the commercial quantity of the contraband.

Learned State counsel states that the trial is in near completion.

Since the recovery falls within commercial quantity of the contraband, therefore, the provisions of Section 37 of the NDPS Act 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 subsection (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.

February 22 , 2019

Paritosh Kumar

**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No