

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

**CRM-M-1743-2020(O&M)
Date of decision: 29.10.2020**

Shiv Kumar

...Petitioner

Versus

Narcotic Control Bureau, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. K.S. Sidhu, Sr. Advocate with
Mr. G.S. Benipal, Advocate for the petitioner.

Mr. Rajiv Sharma, Standing Counsel for the respondent.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through video conferencing.

The petitioner has filed this petition for grant of regular bail in Crime No. 36 dated 02.08.2019, registered under Sections 8/18/29 of NDPS Act, at Police Station Narcotic Control Bureau, Chandigarh.

Learned Senior counsel for the petitioner has submitted that the present case has been registered on the basis of *Panchnama* and that the petitioner has no role in the alleged crime and has only been indicted on the information provided by co-accused Rajesh Paswan, while in custody and such statement in custody is hit by the provisions of Sections 25 and 26 of

the Indian Evidence Act, 1872, having no evidentiary value. It is also submitted that the petitioner was not arrested on the spot, nor any contraband was recovered from him, nor was he named in the secret information provided to the Narcotic Control Bureau, Chandigarh. It is further submitted that alleged recovery effected from the petitioner is of some empty plastic pouches and zippers. Charges are yet to be framed.

On the other hand, learned counsel for the respondent has submitted that 2.7 kg of *Opium* has been recovered from co-accused Rajesh Paswan, who is a carrier and the same was to be supplied to the petitioner and co-accused Moorti, who is still absconding, is a supplier from Bihar. It is further submitted that all the accused persons were in regular touch with each other, as per the call records and the co-accused Rajesh Pawan was arrested on a specific information.

It is still further argued that as per Section 37 (i)(b)(ii) of the NDPS Act, in order to grant the concession of bail to the petitioner, there should be reasonable grounds to believe that the petitioner is not guilty of the offence or he is not likely to commit any offence while on bail.

Learned counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court of India in **Criminal Appeal Nos. 154-157 of 2020** [arising out of SLP(Crl.) Nos. 7309-7312 of 2019] titled as '**State of Kerala Etc. Vs. Rajesh Etc.**' passed on 24.01.2020 and the order dated 03.03.2020 passed by a Coordinate Bench of this Court in **CRM-M-33067-2019** titled as '**Suresh Kumar Vs. Narcotic Control Bureau, Chandigarh**'.

I have heard the learned counsel for the parties and have also gone through the record.

This Court is conscious of the scheme of Section 37 of the NDPS Act, which stipulates that exercise of power to grant bail is not only subject to the limitations contained under Section 439 of Cr.P.C. but is also subject to the limitations placed by Section 37 of the NDPS Act, which commences with a *non-obstante* Clause.

In the case in hand, the petitioner has been indicted on the basis of the statement of co-accused, who had been in custody when his statement was recorded. The petitioner was not arrested on the spot either. It is a case where no recovery has been effected from the petitioner, except that of empty plastic pouches and zippers. The petitioner, who is an aged person, has been in custody for more than 1 year and 2 months and is the first offender.

The petitioner being the first offender, aged person and no recovery of the contraband having been effected from him, an inference can be drawn that he is not likely to commit any offence while on bail.

Moreover, the present case has been registered under Sections 8/18/29 of NDPS Act, whereas Section 37 of the NDPS Act bars grant of bail to an accused, who has committed the offence under Sections 19, 24 and Section 27-A of the NDPS Act. Indisputably, Section 37 of the Act also bars grant of bail to the accused from whom recovery of commercial quantity of the contraband is effected. However, in the present case, the fact remains that no recovery of contraband had been effected from the petitioner and as per

the reply filed by the respondent itself, only recovery of zipper polythene packets was effected from the petitioner and allegedly the left over substance in the said packets was found to be positive for opium. Whether or not the petitioner had conspired and was the ultimate beneficiary/receiver of the contraband is to be established on the basis of evidence led during the trial.

The petitioner has been in custody since 02.08.2019 and charges are yet to be framed. The trial will take time to conclude, especially due to prevailing situation of Covid-19. Thus, no useful purpose would be served by keeping the petitioner behind the bars.

In view of the above, without commenting anything on the merits, lest it should prejudice the case of either side, the petition is allowed and the petitioner is ordered to be released on regular bail to the satisfaction of the learned trial Court/Duty Magistrate.

(HARNARESH SINGH GILL)
JUDGE

29.10.2020

Mangal Singh/ds

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No