

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

CRM-M No.15986 of 2020 (O&M)

Pronounced on : 14.10.2020

Naseeb Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. K.P.S.Virk, Advocate for the petitioner.

Mr. H.S.Multani, AAG, Punjab for respondent No.1/State.

Mr. Sumeet Goel, Advocate for respondent No.2-CBI.

MAHABIR SINGH SINDHU, J.

Second petition has been filed under Section 439 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) for grant of bail pending trial to the petitioner in FIR No.18 dated 09.11.2016, under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*), registered at Police Station SSOC Amritsar, District Amritsar.

As per prosecution case, 500 grams of *Heroin* as well as Indian Currency Notes (alleged drug money), amounting to ₹ 39,73,000/- were recovered from co-accused, namely, Abhishek Chetal on the basis of a secret information and he disclosed about the names of petitioner as well as other co-accused.

Contends that petitioner is in custody since 23.12.2016 and has been falsely implicated in the present case. Also contends that main accused Abhishek Chetal, from whom the alleged contraband was recovered, filed petition bearing CRM-M No.44010 of 2016 for transfer of investigation to CBI, which stands allowed vide order dated 30.01.2019 (P-1) by the co-ordinate Bench of this Court. Consequently, the proceedings before learned trial Court have been stayed and case is transferred to the CBI. Further contends that main accused Abhishek Chetal has also been granted the concession of regular bail by the co-ordinate Bench of this Court, vide order dated 26.09.2018 (P-2). Again contends that petitioner is neither named in the secret information; nor any recovery of contraband or money was effected from him and there is no material to connect him with the alleged recovery or to establish any relation with main accused Abhishek Chetal. Also contends that two other co-accused, namely, Gurbhej Singh @ Bheja s/o Atma Singh and Gurbhej Singh @ Bheja s/o Gurdeep Singh have also been granted the concession of regular bail by the co-ordinate Benches of this Court, vide orders dated 19.05.2017 & 21.08.2017 (P-3 colly.) Further contends that although there were two other criminal cases pending against the petitioner, but he is on bail in those cases. Also contends that above two cases have been planted upon the petitioner as he was behind bars when the same were registered. It is also the contention that complainant and Investigating Officer of the case is one and the same Officer, namely, S.I. Sukhbir Singh, thus, prosecution case is vitiated. Lastly contends that due to Covid-19 situation, there is no progress in the trial, thus, petitioner be released on bail.

On the other hand, learned State Counsel (respondent No.1), on instructions, has opposed the bail by submitting that initially, the case was

investigated by the State Police Operation Cell (SSOC), Amritsar and on completion of investigation, report under Section 173 Cr.P.C. had been submitted on 24.04.2017 before the Court of competent jurisdiction against seven accused, including the petitioner and now the matter is being investigated by the CBI after its transfer. Also contends that petitioner is operating the criminal activities from Jail as he has been nominated as an accused in three NDPS cases after his arrest in this case.

Learned Counsel for respondent No.2/CBI vehemently opposed the prayer of the petitioner by submitting that he along with his brother-Kuldeep Singh are in custody and petitioner is involved in three more cases under the NDPS Act. Also submits that name of the petitioner surfaced on the basis of disclosure made by co-accused Abhishek Chetal and during investigation, it is gathered that petitioner, his brother-Kuldeep Singh and other co-accused used to indulge in smuggling of *Heroin* from the border areas and supplied the same to the end users. Again submitted that petitioner and his brother were in constant touch with co-accused Abhishek Chetal, who used to send the drug money to Pakistan. Further submitted that in August, 2016, petitioner along with his brother delivered ₹ 22 Lakh and ₹ 10 Lakh to said Abhishek Chetal in the area of Jandiala Maruti Agency, Amritsar and near Delhi Public School, Jandiala Guru, Amritsar, respectively, thus, he has actively participated in commission of crime.

Heard learned Counsel for the parties and perused the paper-book.

Before proceeding further, it is relevant to extract the provisions of Section 37 of the NDPS Act and the same read as under:-

Section 37 of the NDPS Act – 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.”

Aforesaid Section, which is in the nature of non-obstante clause to Cr.P.C. including Section 439 thereof, *inter alia*, lays down that no person accused of an offence involving commercial quantity shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and he is not likely to commit any offence while on bail.

Both the above conditions are cumulative and not alternative. The law is well settled that requirement of satisfaction in terms of Section 37 (1)(b)(ii) (*ibid*) regarding the accused being not guilty is to be recorded on the basis of reasonable grounds and that should be more than *prima facie*.

Also necessary to mention here that twin-test stipulated under Section 37 of the NDPS Act was considered by the Hon'ble Supreme Court in '**Union of India Versus Rattan Malik Alias Habul**', (2009) 2 SCC 624 and para

Nos.12 & 13 being relevant read as under:-

“12. It is plain from a bare reading of the non-obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub- section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression “reasonable grounds” has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.”

In the present case, prosecution has gathered the material that petitioner along with his brother-Kuldeep Singh used to collect the *Heroin* from the border areas and supply the same to the users. It has also surfaced during investigation that petitioner as well as his brother were in contact with co-accused Abhishek Chetal, who used to send the drug money to Pakistan and recovery in this case is alleged to be 500 grams *Heroin* i.e. commercial quantity.

Initially, the matter was investigated by the State Police Operation Cell (SSOC), Amritsar and on completion of investigation, report under Section 173 Cr.P.C. had been presented before the Court of competent jurisdiction on 24.04.2017, but now after registration of the fresh FIR, the investigation is being carried out by the CBI.

Still further, petitioner is facing three more cases under the NDPS Act and details of which are as under:-

- “1. *FIR No.63 dated 23.11.2016, under Sections 21/29/61/85 of the NDPS Act and Sections 25/54/59 of the Arms Act, registered at Police Station Valtoha, Tarn Taran;*
2. *FIR No.06 dated 20.03.2017, under Sections 21/25/29/61/85 of the NDPS Act, registered at Police Station SSOC, Amritsar;*
3. *FIR No.140 dated 06.07.2017, under Sections 22/61/85 of the NDPS Act, registered at Police Station Gate Hakima, Amritsar. ”*

Although, learned Counsel for the petitioner tried to justify that petitioner has been falsely implicated in the above cases, but this Court will not go into the legality and validity of the same while examining the bail matter and thus, the fact remains that apart from the present case, he is facing three more cases under the NDPS Act.

In view of the facts and circumstances, discussed hereinabove, this Court is not inclined to record an opinion in favour of the petitioner in terms of Section 37 (1)(b)(ii) (*ibid*) that he is not guilty of the alleged offence for granting bail pending trial.

So far as granting of bail to the other co-accused by the co-ordinate Benches of this Court are concerned, the orders dated 26.09.2018 (P-2), 19.05.2017 and 21.08.2017 (P-3 colly.) nowhere reveal that any satisfaction in

terms of Section 37(1)(b)(ii) (*ibid*) was recorded in either of the case(s), thus, the same are not helpful to the petitioner in any manner.

No doubt, petitioner is in custody for the last more than 03 years and 09 months; challan is yet to be presented, thus, trial is likely to take sufficient time for its final conclusion, but that could not be the sole criteria for granting bail pending trial to the petitioner, who is an accused of the offence involving commercial quantity, until and unless twin-test laid down under Section 37 of the NDPS Act is satisfied, which he has failed to qualify.

In view of the above, this Court has no option except to dismiss the present petition.

Ordered accordingly.

The above observations may not be construed as an expression of opinion on merits of the case.

October 14th, 2020

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>