

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

**CRM-M No.21789 of 2020 (O&M)
Date of Decision: 13.10.2020**

Jasvir Singh @ Kala

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Vishavdeep Singh Rana, Advocate for the petitioner.

Mr. Venu Gopal Jauhar, Sr. DAG, Punjab for the respondent.

MAHABIR SINGH SINDHU, J. (Oral)

Present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial to the petitioner in FIR No.78 dated 16.08.2018, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*), registered at Police Station Ajitwal, Moga.

As per prosecution case, petitioner was found in possession of 100 tablets of Celvindol 100 SR and 850 loose tablets containing salt 'Tramadol Hydrochloride' without having any valid license.

Contentends that petitioner is in custody since 16.08.2018 and there is no other similar case pending against him. Also contends that out of total 13 prosecution witnesses, only 03 have been examined till date. Further contends that no independent witness was joined at the time of alleged recovery and petitioner has been falsely implicated in the present case.

On the other hand, learned State Counsel, on instructions from the police official concerned, opposed the prayer and submitted that recovery effected from the petitioner is commercial in nature, thus, he does not deserve the concession of bail.

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 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."

Concededly, charges have been farmed against the petitioner under Section 22 of the NDPS Act and prosecution evidence is going on, thus, 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.

No doubt, petitioner is in custody for the last more than 02 years and trial is likely to take sufficient time for its final conclusion, but that could not be the sole ground for granting bail pending trial to the petitioner, who is an accused of the offence involving commercial quantity till 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.

However, learned trial Court is requested to expedite the trial if there is no legal impediment.

Since the main petition stands dismissed, therefore, the pending applications, if any, shall also stand disposed off.

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

October 13th, 2020
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes