

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

208

CRM-M-28860-2020.

Date of Decision: 29.10.2020

PREM KUMAR

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Gaurav Antwal, Advocate for the petitioner.

Ms. Tanushree Gupta, Deputy Advocate General, Haryana.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

Present application under Section 439 Cr.P.C is for grant of regular bail to petitioner-Prem Kumar in case FIR No.74 dated 04.05.2020 under Section 188 IPC and Section 22(c) of NDPS Act, registered at Police Station Odhan, District Sirsa.

Reply filed on behalf of respondent-State, is taken on record.

Learned counsel for the petitioner *inter alia* contends that the allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that no independent witness was joined despite availability by the Investigating Agency and as such prosecution version appears to be doubtful. He

further urges that complainant himself conducted the entire investigation, thus, investigation stands vitiated. He further urges that alleged recovery is highly doubtful as mandatory provisions of Section 50 of NDPS Act were not complied with. He further urges that as the search of the petitioner was not conducted in the presence of Gazetted Officer as provided under Section 41(2) of NDPS Act, thus, alleged search stands vitiated. He further submits that petitioner is in custody since 04.05.2020 and since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner (accused) in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that petitioner was apprehended while having conscious possession of 1050 tablets of *Clovidol-100 SR* containing **Tramadol Hydrochloride**, which is a Psychotropic Substance under the provisions of NDPS Act. He further submits that actual weight of above said 1050 tablets of *Clovidol-100 SR* containing **Tramadol Hydrochloride** comes to 420 grams, which falls under “commercial quantity”. He further submits that provisions of Section 50 of NDPS Act were complied with in letter and spirit and further recovery of contraband was effected in the presence of Gazetted Officer. He further urges that the present case pertains to “commercial quantity”, thus, in view of bar created by Section 37 of NDPS Act, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as reply and documents placed on the record at the instance of respondent-State.

Hon'ble Supreme Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In case **Union of India Vs. Ram Samujh and Ors., 1999(9) SCC 429**, it has been elaborated as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. Chief Secy., Union Territory of Goa (1989(2) RCR(Criminal) 505: (1990) 1 SCC 95) as under:-

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and

psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely, (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio- economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in spirit with which Parliament, after due deliberation, has amended.”

Hon'ble Supreme Court in case *State of Kerala Etc. Versus Rajesh Etc., 2020(1) R.C.R. (Criminal) 818* while dealing with provisions of Section 37 of NDPS Act, has laid down as under:-

“20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates. 21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case in hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

Without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that alleged contraband recovered from the petitioner falls under “commercial quantity” and the fact that allegations against the petitioner are serious in nature, thus, in view of rigour of Section 37 of NDPS Act, he does not deserve the concession of bail.

As a sequel to above, instant petition for grant of regular bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

29.10.2020
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No