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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-28935 of 2020****Date of decision: October 06, 2020**

Joga Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU****Present:** Mr. H.S. Bhullar, Advocate for the petitioners.  
Mr. H.S. Multani, AAG Punjab.

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**MAHABIR SINGH SINDHU, J**

Third petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for grant of bail pending trial to the petitioners, in FIR No.10 dated 23.04.2018, under Sections 15, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station SSOC, District Amritsar.

As per prosecution case, on 23.04.2018 police party headed by Inspector Gurinderpal Singh apprehended Truck bearing registration No.PB07-Y-6524 from the area of Mehta Road bypass, Amritsar leading to the recovery of 300 kg of poppy husk from both the petitioners as well as co-accused, Harmanpreet Singh and all three were arrested on the spot.

Contends that petitioners are in custody since 23.04.2018, i.e. more than 2½ years; and now after arrest of owner of the truck, namely Baljit Singh supplementary challan has been presented qua him, but charges are yet to be framed, thus, in view of present pandemic trial

is likely to take sufficient long time. Further contends that on earlier occasion, this Court while disposing off CRM M-3423 of 2020 on 03.03.2020 (P-4), filed by petitioner No.2-Bhag Singh directed the trial Court to proceed in the matter, expeditiously and conclude the trial on or before 31.05.2020, but now as submitted above, after arrest of owner of the truck, de novo trial will start, thus, directions of this Court would be rendered meaningless. In support of his case, learned counsel for the petitioners has also referred judgment of Hon'ble Supreme Court reported as **2011 (1) RCR (Criminal) 381, State of Kerala versus Raneef.**

On the other hand, learned State counsel while opposing the prayer of the petitioners submitted that recovery in this case is commercial in nature, thus, they do not deserve the concession of bail pending trial in view of the bar contained under Section 37 of the NDPS Act. Also submitted that this is the third petition for seeking bail without any changed circumstances, thus, the petition deserves to be dismissed.

Heard both sides and perused the paper-book.

No doubt, both the petitioners are in custody for the last more than 2 ½ years, but before considering the matter in controversy, it would be appropriate to extract Section 37 of the NDPS Act, which reads 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 the provisions of 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*.

It would be appropriate 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 of the same 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."*

As per allegations of the prosecution, recovery in the present case is 300 kg. of poppy-husk and that falls within the category of commercial quantity under the provisions of NDPS Act. Also relevant to mention here that both the petitioners were apprehended on the spot at the time of recovery of alleged contraband.

In view of the above, this Court is not inclined to record an opinion in favour of the petitioners in terms of Section 37 (1)(b)(ii) to the effect that they are not guilty of the alleged offence for granting bail pending trial.

No doubt, after arrest of owner of the truck, supplementary challan has been presented and charges are yet to be framed, thus trial is likely to take sufficient long time. But that could not be the sole criteria for grant of bail to the petitioners being accused of the offence involving commercial quantity, till the twin-test laid down under Section 37 of the NDPS Act is satisfied, which they have failed to qualify.

In view of the above, the judgment of Hon'ble Supreme Court in **Raneef's** case (supra) is not helpful to the petitioners, as the offence in that case did not pertain to NDPS Act and the provisions of Section 37 thereof were not under consideration.

Consequently, this Court has no option except to dismiss the present petition.

Ordered accordingly.

However, keeping in view the custody of the petitioners as well as order dated 03.03.2020 passed by this Court in CRM M-3423 of 2020, learned trial Court will proceed with the matter expeditiously, if there is no legal impediment.

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

(MAHABIR SINGH SINDHU)  
JUDGE

**October 06, 2020**  
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No