

Sr.No.106

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

CRM-M-36648-2020

Date of decision:09.11.2020

Harkaran Singh

... Petitioner(s)

versus

State of Haryana

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Mr. Sandeep Siwach, Advocate
for the petitioner.

Through Video Conference

Jasgurpreet Singh Puri, J.(Oral)

Present petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in FIR No.339, dated 29.10.2020 registered under Section 22(C), 27A (Act No.61) of Narcotic Drugs and Psychotroic Substantes Act, 1985 (for short, 'the NDPS Act') at Police Station Bhuna, District Fatehabad.

As per the allegations contained in the FIR when the police party reached at village Tibbi to Bhundra Road near Canal Bridge Tibbi then in light of govt. Vehicle one person was coming seen having one plastic bag on his right shoulder who on seeing the red light upon the Govt. Vehicle suddenly kept hide himself in the bushes. When the vehicle was stopped then with the help of colleagues and torch light the person who kept himself hide in the bushes alongwith plastic bag on being asked told his name to be Simrandeep Singh @ Soni son of Balwant Singh and he was found to be in possession of 10,000 Tramadol Hydrochloride Tablets, Covidol-100 SR

weighing 5 kg 750 grams. Thereafter, on the basis of the disclosure statement made by the aforesaid accused the petitioner was named in the present case.

Learned counsel for the petitioner has submitted that in the present case the petitioner has been named on the basis of disclosure statement and therefore, he is entitled for grant of anticipatory bail. He has further submitted that he even does not know the aforesaid Simrandeep Singh @ Soni and that he was wrongly roped up in the present case, therefore, has prayed for grant of anticipatory bail to the petitioner.

Notice of motion.

On asking of the Court, Mr. Ranvir Singh Arya, Addl.A.G, Haryana accepts notice on behalf of the State.

Learned State counsel has submitted that he already received a copy of the petition in advance and had also sought instructions from SI Prahlad. He has submitted that as per instructions there was huge recovery of 10,000 Tramadol Hydrochloride Tablets and the total weight of the contraband was 5 kg 750 gms. It is further submitted that the petitioner has committed an offence under Section 22(C) and Section 27(A) of NDPS Act and learned State counsel has further submitted that the petitioner is also involved in another case i.e. FIR No.184 dated 6.08.2020 at Police Station Sadar Ratia under the NDPS Act and the same is also at investigation stage. He has further submitted that although in the said FIR the petitioner was nominated on the basis of disclosure statement but that would itself not entitle the petitioner for grant of anticipatory bail. He has further submitted that recovery of contraband is not only commercial but a very huge recovery

has been made and in view of the specific bar contained in Section 37 of the NDPS Act the petitioner is not entitled for grant of anticipatory bail.

I have the learned counsel for the parties.

Present FIR was lodged under 22(C), 27A (Act No.61) of Narcotic Drugs and Psychotropic Substances Act, 1985. The alleged recovery is of 10,000 Tramadol Hydrochloride Tablets and the total weight of the contraband was 5 kg 750 gms which is certainly of commercial quantity. There is another FIR against the petitioner under the NDPS Act which also is a significant factor for the purpose of deciding the present petition for grant of anticipatory bail.

Section 37 of the NDPS Act creates bar for the grant of bail whenever the recovery is of commercial in nature and also when the offence is under Section 27-A of the NDPS Act. Section 37 of the NDPS Act is reproduced as under:-

37. 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 2[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.

Perusal of the provisions of Section 37 of NDPS Act would show that although there is a bar created for the grant of bail but a departure can be made in case when the public prosecutor is granted an opportunity to oppose the bail application and when the public prosecutor opposes the bail application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail then the Court can always consider the grant of bail in that regard.

Hon'ble Supreme Court has rendered a judgment in the case of ***State of Kerala etc. vs. Rajesh etc;*** 2020(1) R.C.R.(Criminal) 818 has observed 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 CrPC, but is also subject to the limitation placed by [Section 37](#) which commences with nonobstante 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 on 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.

22. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act.”

In the present case, there is huge alleged recovery of 10,000 Tramadol Hydrochloride Tablets and the total weight of the contraband was 5 kg 750 gms and the petitioner is also stated to be involved in another FIR under the NDPS Act. Learned counsel for the petitioner has not been able to show as to how he would be covered under the exception to the bar contained in Section 37 of the NDPS Act. There would be no reasonable ground for believing at this stage that he is not guilty of such an offence. The matter is still at investigating stage and therefore, considering the totality of circumstances of the case, this Court does not deem it fit to interfere in the present case. Consequently, the present petition is hereby dismissed.

However, nothing stated hereinabove, shall be construed to be an expression on the merits of the case.

9th November, 2020
Shivani Kaushik

[JASGURPREET SINGH PURI]
JUDGE

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