

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

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CRM-M-41591-2020

Date of decision : 16.12.2020.

RAKESH

.....Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

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

Ms. Dimple Jain, AAG, Haryana.

Mr. Rajiv Sharma, Senior Standing Counsel
for Narcotics Control Bureau.

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR/complaint No.VIII/14/DZU/2017 dated 07.04.2017 under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station, Narcotics Control Bureau, Delhi Zonal Unit.

As per the case set up by the prosecution, on 07.04.2017 an information was received that accused Raju and Rakesh were involved in drug trafficking and they were coming from Himachal Pradesh via Panipat toll plaza along with Charas in huge quantity in Maruti Swift Dzire Car No.HR-38W-7905. On the basis of the said information, both the accused were apprehended at the Toll Plaza, Panipat. The search led to the recovery of 13 kgs of Charas which was concealed in the doors of the car.

Learned counsel for the petitioner would contend that petitioner is innocent and he was only the driver of the vehicle and that the car is also not registered in his name.

Learned counsel for NCB contends that the recovery in the present case is huge quantity of Charas i.e. 13 kgs. He further contends that in view of the recovery, which is commercial in nature, the embargo of Section 37 of the NDPS Act would come into play and the accused is not entitled to bail. He further contends that the petitioner was the driver of the car and it was well within his knowledge that the said consignment of Charas weighing 13 kgs was concealed in the doors of the car.

I have heard learned counsel for the parties.

In the present case, though the accused has been in judicial custody for the last 03 years and 08 months, however, the fact remains that the recovery in the present case is 13 kgs of Charas which is clearly within the ambit of commercial quantity. In view of the recovery, the provisions of Section 37 of the NDPS Act would come into play. Learned counsel for the NCB also relies upon the judgment of the Supreme Court in *State of Kerala and others Vs. Rajesh and others, Crl. Appeal No.154157-2020 dated 24.01.2020* wherein the Supreme Court has clearly laid down as follows:

“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 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 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."

In view of the above, I do not find any merit in the present petition and the same is dismissed. It is, however, made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

However, keeping in view the custody period of the petitioner, this Court deems it appropriate to request the Trial Court to try and conclude the trial within a period of 08 months from the date of receipt of certified copy of the order by way of video conferencing/physical hearing provided the defense counsels co-operate.

December 16, 2020
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Yes/No
Whether reportable: Yes/No