

202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-9135-2021

Date of Decision: 04.03.2021

PARSHANT

... PETITIONER

VS.

STATE OF HARYANA

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. R.K.Girdhwal, Advocate
for the petitioner.

Mr. Amrik Singh Narwal, Deputy Advocate General, Haryana.

VIVEK PURI, J.(ORAL)

The matter has been taken up through video-conferencing due to COVID-19 pandemic.

Through instant petition, the petitioner is seeking regular bail in case bearing FIR No. 397 dated 02.10.2019 under Section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') registered at Police Station Urban Estate, District Rohtak (Haryana).

Briefly, the allegations against the petitioner are with regard to the recovery of 125 vials of winerex containing codeine.

It has been argued by learned counsel for the petitioner that the petitioner is in custody for the last one year and five months and the trial is not progressing due to COVID-19 Pandemic.

On the contrary, it has been pointed out by learned State counsel that the weight of contraband recovered from the conscious possession of the petitioner is to the extent of 12.50 Kg. which falls in the category of commercial quantity.

In the judgment dated 24.01.2020 rendered by Hon'ble the Supreme Court in **State of Kerala etc. vs. Rajesh etc., 2020 (1) R.C.R (Criminal) 818**, it has been observed that liberal approach in granting the bail in the cases under the NDPS Act is uncalled for. Furthermore, the twin conditions, as laid down under Section 37 of the NDPS Act must be satisfied before extending the concession of bail. In the aforesaid decision, it has been laid down as following:-

“18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of [Section 37](#) of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to [Section 37](#) of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus:-

“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 [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.

(emphasis supplied)

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.”

A perusal of the above makes it abundantly clear that the accused cannot be released on bail unless the material on record indicates that there are reasonable grounds for believing that he is not guilty of such offence; and he is not likely to commit any offence while on bail. It has been further observed that the expression “reasonable grounds” means something more than *prima facie* grounds.

In the case in hand, the weight of contraband falls in the category of commercial quantity. Moreover, long incarceration cannot be termed to be a circumstance to extend the concession of bail particularly because the Courts were on restricted mode of hearing due to Covid-19 Pandemic.

There is nothing to suggest that petitioner has not committed the offence and is not likely to commit the offence while on bail.

Keeping in view the totality of circumstances, no justified ground is made out to extend the concession of regular bail to the petitioner.

Dismissed.

04.03.2021
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No