

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

Sr. No.203

**CRM-M-12432-2021
Date of Decision: 31.03.2021**

Mohammad Suyuib @ Saify

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Tarun Vir Singh Lehal, Advocate,
for the petitioner.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

This is third bail petition for grant of regular bail, filed by the petitioner, namely, Mohammad Suyuib @ Saify, in case bearing FIR No.68 dated 11.06.2020, under Section 22/29 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City-2 Malerkotla, District Sangrur.

Notice of motion.

Mr. H.S. Sullar, DAG, Punjab, accepts notice on behalf of the State.

Heard on the bail application.

As per the version of the prosecution, on 11.06.2020, in pursuance of secret information, the present petitioner was intercepted and from his possession, 80 strips of intoxicant tablets of Clovidol, each strip containing 10 tablets i.e. total 800 tablets were recovered and he was not having any valid permit or licence for keeping the same.

Now, it is submitted by learned counsel for the petitioner that the applicant-petitioner is in custody since 11.06.2020 and the conclusion of the trial is likely to take time. Even, it is submitted that the co-accused Dilshad has already been granted benefit of bail vide order dated 09.11.2020, passed by this Court.

On the contrary, it has been submitted by learned State counsel that the quantity of contraband recovered from the conscious possession of the present petitioner falls in the category of '**Commercial Quantity**' as the total weight of the tablets, comes to be 320 grams. Also, it is submitted that the case of the present petitioner is distinguishable from the case of Dilshad, co-accused, who has been granted benefit of bail, as he was not intercepted at the time of alleged recovery and he was nominated as accused, in pursuance of the disclosure statement, made by the present petitioner. Also it is submitted that the necessary conditions, as laid down in Section 37 of the NDPS Act, do not stand satisfied for extending benefit of bail to the petitioner.

Even though, the fellow accused Dilshad had been granted bail vide order dated 09.11.2020 by this Court, but, however, it has been rightly so pointed out that the case of the petitioner is distinguishable from the case of Dilshad, as recovery had neither been effected from Dilshad. In fact, he had been nominated in this case, in pursuance of the disclosure statement made by the present petitioner.

Undisputedly, the extend of recovery so effected from the petitioner falls in '**Commercial Quantity**' .

In State of **Kerala etc. vs. Rajesh etc., 2020 (1) R.C.R (Criminal) 818**, it has been observed by the Hon'ble Apex Court that liberal approach in granting the bail in cases under the NDPS Act is uncalled for.

Furthermore, it states that the parallel conditions, as laid down under Section 37 of the NDPS Act must be satisfied before extending the concession of bail. It was observed in the aforesaid decision, as follows:-

“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 observations makes it crystal clear that the accused cannot be released on bail, unless, from the material coming forth, it is evident 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. Further more, it has also been observed that the expression “**reasonable grounds**” means something more than prima facie grounds.

In the case in hand, the quantity of contraband recovered from the conscious possession of the petitioner falls in the category of '**commercial quantity**'. At this stage, there is nothing so pointed out that there are reasonable grounds for believing that the petitioner is not guilty of an offence under the NDPS Act and also there is nothing as such coming on record where rules out the possibility to conclude that the petitioner is not likely to commit the offence, while on bail. Considering the same, at this stage, there is no justifiable ground made out to extend the concession of regular bail to the petitioner.

Dismissed.

(ARCHANA PURI)
JUDGE

31.03.2021

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Whether speaking/reasoned

Yes

Whether reportable

Yes