

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

CRM-M-12339-2021(O&M)

Date of decision:-24.8.2021

Harjit Singh @ Ravi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Digvijay Nagpal, Advocate
for the petitioner.

Ms.Bhavna Gupta, DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

CRM-20900-2021

This is an application for placing on record the order dated
19.2.2021 passed by this Court as Annexure P4.

Heard.

The application is allowed, as prayed for and document is
taken on record, subject to all just exceptions.

CRM-M-12339-2020

This second petition for regular bail has been filed by
petitioner – Harjit Singh @ Ravi, aged 23 years, resident of Ghumiara
Wali Gali near Dera Kabaristan, Kotkapura, Tehsil Kotkapura, District
Faridkot – an accused in FIR No.52 dated 30.3.2019, under Section 22 of
NDPS Act, registered with Police Station City, Kotkapura, Tehsil
Kotkapura, District Faridkot.

In nutshell, the facts of the case as per the prosecution story are that 30.3.2019 at about 1:35 p.m., a police party while being present near railway crossing Hari Nau Road within jurisdiction of Police Station Kotkapura, District Faridkot having laid a NAKA there, observed three persons, namely, Babbal son of Amar Ram, resident of Jaito Chungi, Kotkapura, Raju Singh son of Sukhdev Singh, resident of Jaito Road near Babbu Kabariya shop, Kotkapura and petitioner/accused Harjit Singh @ Ravi son of Shambu Dayal, resident of Ghumiara Wali Gali near Dera Kabaristan, Kotkapura, Tehsil Kotkapura, District Faridkot, coming from the side of main bazaar, carrying transparent polythene bags in their hands; on seeing the police party, they tried to turn back, however, they were apprehended on the basis of suspicion of carrying intoxicant material in the polythene bags being carried by them; on being searched as per law and rules, the polythene bag in the hand of Babbal was found to contain 12 bottles of Codirex and 12 strips each strip having 10 tablets of Carisoma, total 120 tablets; the transparent bag held by accused Raju Singh in his right hand was found to contain 8 bottles of Codirex and 8 strips each strip having 10 tablets of Carisoma, total 80 tablets; the polythene bag being carried by petitioner/accused Harjeet @ Ravi was found to contain 10 bottles of Codirex and 10 strips each strip having 10 intoxicant tablets. All the polythene bags containing contraband were converted into sealed parcels and then taken into police possession. After registration of formal FIR, the matter was investigated. Accused were formally arrested in this case. The petitioner/accused had approached the Court of Judge, Special Court, Faridkot by filing an application for grant

of regular bail. However, that application was dismissed by the said Court vide a detailed order dated 21.1.2020, as such, the petitioner had approached this Court with the same request by filing a petition bearing CRM-M-6433-2020, which was dismissed vide order dated 19.2.2020 for the reason of the recovered contraband amounting to commercial quantity attracting rigors of Section 37 of NDPS Act. Now the petitioner has come to this Court again seeking that very relief, which request is being opposed by the State Counsel.

I have heard learned counsel for the parties besides going through the record.

Though learned counsel for the petitioner has argued that the contraband recovered from the petitioner/accused amounts to non-commercial quantity and bar of Section 37 of NDPS Act, 1985 is not attracted since recovery effected from each of the accused is separate.

However, I am not convinced by such contention of learned counsel for the petitioner. All the three accused were coming together carrying transparent polythene bags containing contraband in their hands. They were apprehended and contraband was recovered from them. All three of them are to be taken to be in actual possession of the total contraband and not the contraband being carried by them individually in the transparent polythene bags. The total contraband thus come within the definition of commercial quantity attracting bar of Section 37 of NDPS Act. Section 37 of NDPS Act provides as under:

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 3 [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 subsection (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.*

In the present case, I do not see any reason to record satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

Learned counsel for the petitioner has further contended that co-accused of the petitioner namely Babbal has been granted benefit of regular by a Co-ordinate Bench of this Court vide order dated 2.3.2021, copy Annexure P3 and the case of the present petitioner is at par with him, therefore, he also deserves to be granted bail on the ground of parity. Though copy of order Annexure P3 goes to show that accused Babbal was granted benefit of regular bail but then bar of Section 37 of the Act was not brought to the notice of the Hon'ble Bench. In para No.2 of the said order, it is mentioned that the recovered contraband was just marginally

higher than commercial quantity. It may be stated here that once it is found that the recovered contraband amounts to commercial quantity bar of Section 37 of the Act comes into play and it is not a question of marginally or substantially higher than commercial quantity. The bail was granted to co-accused Babbal keeping in view the fact that he is in custody for 2 years and trial is not likely to conclude in near future. However, as discussed above, bar of Section 37 of the Act having not been brought to the notice of the Hon'ble Bench, the same has not been discussed in the order. In my considered view, the custody of petitioner for a period of 2 years or more does not dilute the rigors of Section 37 of the Act and make the bar disappear. The petitioner is not entitled to grant of bail on merits and he cannot ask for such concession being granted to him on the ground of parity.

Therefore, finding no merit in the petition, the same stands dismissed.

24.8.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No