

-1-

1.	CRM-M-17242 of 2020(O & M) Date of decision :-23.07.2021	
Hardeep Kumar @ Babbu		...Petitioner
	Versus	
State of Punjab		...Respondent
2.	CRM-M-23667-2020 (O & M)	
Rajinder Kumar @ Raju		...Petitioner
	Versus	
State of Punjab		...Respondent
3.	CRM-M-25031-2020	
Rupesh Kumar		...Petitioner
	Versus	
State of Punjab		...Respondent
4.	CRM-M-26360-2020	
Tayab Qureshi		...Petitioner
	Versus	
State of Punjab		...Respondent
5.	CRM-M-723-2021 (O & M)	
Krishan Kumar Arora		...Petitioner
	Versus	
State of Punjab		...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sandeep Kumar Passi, Advocate for the petitioner
in CRM-M-17242-2020.

Mr. Vikram Chaudhari, Senior Advocate with
Mr. Sartaj Singh Gill, Advocate for the petitioner
in CRM-M-23667-2020.

Mr. J.S. Sandhu, Advocate for the petitioner
in CRM-M-25031-2020.

CRM-M-17242 of 2020 (O & M)
CRM-M-23667-2020 (O & M)
CRM-M-25031-2020
CRM-M-26360-2020 and
CRM-M-723-2021 (O & M)

-2-

Mr. Arihant Jain, Advocate and
Mr. Rishav Jain, Advocate for the petitioner
in CRM-M-26360-2020.

Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate and
Mr. Edward Augustine George, Advocate
for the petitioner in CRM-M-723-2021.

Mr. Gaurav Garg Dhuriwala, Senior DAG, Punjab.

SUVIR SEHGAL, J.

This order shall dispose of a bunch of five petitions bearing Nos.CRM-M-17242-2020, Hardeep Kumar @ Babbu vs. State of Punjab, CRM-M-23667-2020, Rajinder Kumar @ Raju vs. State of Punjab; CRM-M-25031-2020, Rupesh Kumar vs. State of Punjab; CRM-M-26360-2020 Tayab Qureshi vs State of Punjab and CRM-M-723-2021, Krishan Kumar Arora vs. State of Punjab, as all the petitioners are accused in FIR No.95 dated 25.02.2020 registered for offences under Sections 22, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short -‘The NDPS Act’) at Police Station City Barnala, District Barnala, Annexure P-1 and are seeking grant of regular bail under Section 439 of the Code of Criminal Procedure, 1973.

FIR, Annexure P-1, was registered on the basis of secret information and Mohan Lal @ Kala, was apprehended on 26.02.2020 from whom recovery of intoxicating tablets was effected. His interrogation leads to chain of arrests, including that of petitioners, and huge recoveries. The petitioners were arrested on different dates in March and September 2020.

Counsel representing the petitioners have contended that the petitioners have been arraigned as accused on the basis of disclosure statements, which are inadmissible in evidence. It has been submitted that

most of the petitioners are chemists and possess valid licenses under the Drugs and Cosmetics Act, 1940, and they have not committed any offence under the NDPS Act. Reliance has been placed on order dated 25.11.2020 passed in CRM-M-29854-2020, whereby co-accused, Naresh Mittal @ Rinku was released on bail. Reference has been made to order dated 25.09.2020 passed in CRM-M-48634-2019, Jasbir Singh @ Sukh vs. State of Punjab.

Opposing the petition, State counsel has relied on the status report filed by way of affidavit of Deputy Superintendent of Police, Barnala, and has argued that drug money and huge quantity of contraband, which falls within the ambit of commercial quantity, have been recovered from the petitioners. He submits that the bar under Section 37 of the NDPS Act is attracted and the petitioners are not entitled to be released on bail. He has cited the judgment of the Hon'ble Supreme Court in **State of Punjab vs. Rakesh Kumar**, 2019 (1) RCR (Criminal) 218 and **State of Kerala vs. Rajesh and others** 2020 (1) RCR Criminal 818. In particular, State counsel has submitted that Krishan Kumar Arora (petitioner in CRM-M-723-2021) is the kingpin and most of the drugs recovered, have been manufactured by a company, in which this accused is playing an active role.

I have considered the arguments addressed by the respective counsel and gone through the paper-books with their able assistance.

In the affidavit filed by the State, it has been deposed that Tramadol has been declared to be a narcotic/psychotropic substance vide Notification dated 26.04.2018, Annexure R-1, issued by the Government of India in exercise of power conferred by Sub section (vii)(a) and (xxiii)(a) of Section 2 of the NDPS Act and quantity in excess of 250 grams has been

classified as commercial quantity. Vide memo dated 13.08.2019, Annexure R-2, Foods and Drugs Administration Department, Punjab, directed all the retailers, wholesale chemists, distributors, stockists etc. to submit their stock statements within a period of 15 days and to return the stock of tramadol and tatentadol held by them exceeding the quantity prescribed in the Memorandum and apply for special permission or licence to the Competent Authority for possessing the same in excess of the specified quantity.

During investigation, the accused revealed the names of the present petitioners and their interrogation led to recoveries from them. As per the affidavit filed by the State, in addition to drug money of Rs.1,72,60,000/- and five vehicles, a huge quantity of 45,39,470 prohibited tablets, capsules and injections have been recovered from the 17 accused, who have been arrested, however, none of the accused possess any special permission or license as required vide memo, Annexure R-2. It has been stated in the affidavit that all the accused formed part of a gang and were working hand in glove with each other while trafficking in commercial quantity of drugs. Accused were also shown to have been involved in a number of other cases registered against them under the NDPS Act.

The seized contraband falls within the ambit of commercial quantity and the rigors of Section 37 of the NDPS Act will apply. Hon'ble Supreme Court in Rajesh's case (supra) has held that Section 37 of NDPS Act commences with a non obstante clause and unless the twin conditions laid down therein are satisfied, bail cannot be granted. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second is that Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence.

Reasonable grounds have been held to be something more than the prima facie grounds and contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. However, no material could be referred to by the petitioners to show that they are not guilty of the offence alleged. Insofar as the judgment in Naresh Mittal's case (supra) relied upon by the petitioners is concerned, suffice it to say that the provision of Section 37 of the NDPS Act was not brought to the notice of the Court. Insofar as the order passed in Jasbir Singh's case (supra) is concerned, it may be noticed that there was a dispute regarding the place from where the recovery was effected and the case clearly fell within the second condition of Section 37 noticed above.

In Rakesh Kumar's case (supra), it has been observed by the Hon'ble Supreme Court that NDPS Act should not be read in exclusion to Drugs and Cosmetics Act, 1940, and in case of violation of provisions of NDPS Act, action can be initiated thereunder.

In these circumstances, the petitioners are not entitled to the concession of bail during the pendency of the trial.

All the petitions are accordingly dismissed.

It is clarified that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

Judgment Reserved on 08.07.2021
Date of decision :- 23.07.2021
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No