

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

CRM-M-18738-2020

Date of decision:-15.2.2021

Deepak @ Topi

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.Vaibhav Jain, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner – Deepak @ Topi, aged about 23 years, resident of Kirayaidar Chowk, Quazi Mandi, Jalandhar – an accused in FIR No.181 dated 23.7.2018, under Section 22 of NDPS Act, registered with Police Station Rama Mandi, Jalandhar.

Briefly stated, the facts of the case as per prosecution story are that on 23.7.2018, when the petitioner/accused was apprehended by the police, he was found in possession of contraband in the shape of 11 injections of Rexogesic 2 ml each and 11 injections of Avil 10 ml each. Formal FIR in the matter was registered. Investigation in the case started. The petitioner had filed application for regular bail in the Court of Sessions, which was declined by learned Judge, Special Court, Jalandhar vide order dated 6.6.2020, as such, he has approached this Court with the same request.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance.

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

The contraband recovered from the possession of petitioner/accused amounts to commercial quantity, attracting bar of Section 37 of NDPS Act, which reads 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 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.

In ***Union of India Versus Rattan Malik @ Habul, 2009(1)***

RCR(Criminal) 938, the Apex Court had observed that when an accused is arrested in a case under Narcotic Drugs and Psychotropic Substances Act, grant of bail to such accused is not only subject to limitations imposed under Section 439 of the Criminal Procedure Code, 1973, it is

also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act and the accused will be granted bail only if the Court is satisfied that there is reasonable ground for believing that accused was not guilty of offence and he was not likely to commit an offence under Narcotic Drugs and Psychotropic Substances Act while on bail. In that way, bail could be granted, if mandatory provisions of Section 37 of Narcotic Drugs and Psychotropic Substances Act are satisfied.

In another judgment *State of Kerala etc. Versus Rajesh etc. arising out of SLP(Crl.)No.73097312 of 2019*, the Apex Court had observed as under:

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.

x x x x

In para No.19 of that judgment, it was further observed as under:

19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under [NDPS Act](#). In Union of India Vs. Ram Samujh and Ors. 1999(9) SCC 429, it has been elaborated as under:

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting deathblow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the [NDPS Act](#), has succinctly observed about the adverse effect of such activities in [Durand Didier v. Chief Secy., Union Territory of Goa \[\(1990\) 1 SCC 95\]](#) as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the

society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the [NDPS Act](#) should not be released on bail during trial unless the mandatory conditions provided in [Section 37](#)

x x x x

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.

The drug trafficking is rising at an alarming rate in this region, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking.

Furthermore, the petitioner/accused comes out to be a habitual criminal being involved in three more criminal cases. As such, there is reasonable apprehension of his taking to path of crime again and

even absconding and furthermore to tamper with the prosecution evidence by giving threat or inducement to the prosecution witnesses, if granted concession of regular bail.

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

However, the trial Court is directed to expedite the trial by giving short adjournments.

15.2.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No