

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

**CRM No.M-26029 of 2021
Date of Decision: August 12, 2021**

Jagroop Singh @ Jamba

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Munish Raj Chaudhary, Advocate,
for the petitioner.

Mr.H.S.Sullar, DAG, Punjab
for the respondent-State.

ARCHANA PURI, J.

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

The petitioner has filed this second petition under Section 439 Cr.P.C. for seeking regular bail in case FIR No.73 dated 10.08.2020 under Sections 22, 27 and 29 of the NDPS Act, Police Station Tallewal, District Barnala.

Heard on the bail petition.

As per the prosecution version, in pursuance of the secret information received, specifically qua indulgence of the petitioner Jagroop Singh @ Jamba in sale of intoxicant tablets in the various villages, a naka was laid and petitioner was apprehended. From the possession of the

petitioner, 180 tablets of Clovidol 100 SR and 1020 intoxicant tablets of Lomotil were recovered. The petitioner was arrested at the spot.

Now, it is submitted by learned counsel for the petitioner that petitioner is behind the bars since 10.08.2020 and due to pandemic situation, no evidence of the prosecution has been recorded in the present case. As such, a prayer has been made for grant of regular bail to the petitioner.

On the other hand, learned State counsel has resisted the claim for bail as he submits that the extent of recovery, so effected from the petitioner, falls under '**commercial quantity**' and rigors of Section 37 of the NDPS Act, as such, are attracted. It is also submitted by learned State counsel that in the present case, challan has since been presented and charge has been framed on 28.01.2021, but however, till date, no witness out of 13 cited witnesses, has been examined.

Undisputedly, the extent of recovery, so effected from the petitioner, falls in '**commercial quantity**', which is much beyond the bracket of commercial quantity. In this regard, it is appropriate to make a mention to the decision rendered by the Hon'ble Apex Court in ***State of Kerala etc. vs. Rajesh etc., 2020 (1) R.C.R (Criminal) 818***, wherein, it has been observed 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. Furthermore, 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**' as evident from the recitals of the FSL report, which has been placed on record.

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, which 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, no justifiable ground is made out to extend the concession of regular bail to the petitioner.

Consequently, the present petition stands dismissed.

However, as submitted by learned State counsel that the charge in the present case has been framed on 28.01.2021 and out of cited 13 witnesses in the list of witnesses, till date, no witness has been examined, therefore, keeping in view this factual position, it is expected from the trial court to conclude the trial expeditiously.

A copy of this order be also sent to the trial Court.

(ARCHANA PURI)
JUDGE

August 12, 2021
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
Yes/No