

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

**CRM-M-36459-2021
DECIDED ON: 17th SEPTEMBER, 2021**

ARUN KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Ms. Gurpal Kaur Dulat, Advocate for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

AVNEESH JHINGAN, J (ORAL)

[1] Due to COVID-19 situation, the Court is convened through Video Conference.

[2] This third petition under Section 439 Cr.P.C is filed seeking regular bail in FIR No. 195, dated 25th June, 2020, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') registered at Police Station Phillaur, District Jalandhar (Rural).

[3] The brief facts are that on 25th June, 2021, the police party checked motorcycle bearing No. PB-10-GQ-4253. The motorcycle was being driven by Rakesh Kumar and Arun Kumar (Petitioner) was the pillion rider. On seeing the police party, both the accused threw the polythene envelopes. On checking 5904 capsules of Tramadol Hydrochloride were recovered from the polythene thrown by Rakesh Kumar and 11200 intoxicant tablets of Alprazolam salt were recovered from the polythene

thrown by the petitioner.

[4] Learned counsel for the petitioner submits that it is a case of false implication. This is the only case against the petitioner. Petitioner is in custody since 25th June, 2020. The investigation is complete. The medical ailment is an additional difficulty being faced by the petitioner while in custody.

[5] Learned State counsel opposes the prayer for grant of regular bail. The submission is that it is a case of heavy recovery. The reliance is placed upon Section 37 of the Act.

[6] Apart from making a bald statement that it is a case of false implication and the recovered tablets were planted, there is no averment or pleading for the false implication of the petitioner. There is a bar under Section 37 of the Act for grant of bail where the recovery is of commercial quantity.

[7] The Supreme Court in **State of Kerala Versus Rajesh 2020 AIR (Supreme Court) 721** held as under:-

“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 CR.P.C., 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.

21. The expression “reasonable grounds” means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying objects of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for. ”

[8] There is nothing on record for this Court to come to even *prima facie* conclusion that it is a case of false implication. Moreso, considering the total quantity of recovery made, no case is made out for grant of regular bail.

[9] Dismissed.

[10] Taking into account that the petitioner is suffering from various ailments, jail authorities will ensure appropriate medical treatment for the petitioner.

17th SEPTEMBER, 2021
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes
Whether reportable Yes