

1. The matter has been taken up through video-conferencing due to COVID-19 pandemic.
2. Through instant petition, the petitioner is seeking regular bail in case bearing FIR No.168 dated 12.09.2018 registered under Section 22 of the Narcotics Drugs and Psychotropic Substances Act (for short the 'NDPS Act') at Police Station Beas, Amritsar Rural, District Amritsar.
3. Briefly, the aforesaid FIR has been registered in pursuance of recovery of 870 tablets of Alprazolam from the possession of the petitioner.
4. Custody certificate of the petitioner has been placed on record.
5. It has been argued by learned counsel for the petitioner that the petitioner has been falsely implicated in the instant case and was lifted from the Court Complex, Amritsar. Furthermore, the mandatory provisions of Section 50 of the NDPS Act have not been complied with.
6. On the contrary, it has been argued by learned State counsel that the average weight of the tablet(s) recovered from the possession of the petitioner is 256 mg and the total weight comes to 222.72 grams which falls

in the category of commercial quantity. Furthermore, the petitioner is involved in 18 other cases, thought acquitted/discharged in 15 cases and has been convicted in 03 cases under the NDPS Act. The challan was presented on 20.01.2019, charge was framed on 12.03.2019 and out of 08, 02 witnesses have already been examined.

7. It is significant to note the earlier bail application for grant of regular bail to the petitioner was dismissed by a speaking order dated 19.08.2020, wherein, the petitioner had also raised the plea of false implication and the fact that he was lifted from the Court Complex, Amritsar.

8. In the instant case, as per the version of the prosecution, on seeing the police party, the petitioner had made an attempt to throw the polythene bag which was found to be containing contraband. It is not the case of the prosecution that contraband has been recovered during the course of personal search of the petitioner and as such, it cannot be said that the mandatory provisions of Section 50 of the NDPS Act were required to be complied with. The recovery of contraband has not been effected during the course of personal search of the petitioner. The mandate of Section 50 of the NDPS Act is confined to the personal search only as observed by Hon'ble the Supreme Court in State of Punjab vs. Baljinder Singh and another, 2020 (1) RCR Criminal, 58 and Jeet Ram vs. The Narcotics Control Bureau, Chandigarh, 2020 (4) R.C.R (Criminal), 151. In such circumstances, the case of the prosecution cannot be doubted at this stage on the score of non-compliance of Section 50 of the NDPS Act.

9. In State of Kerala etc. vs. Rajesh etc., 2020 (1) R.C.R (Criminal) 818, it has been observed by the Hon'ble Supreme Court that

liberal approach in granting the bail in the cases under the NDPS Act is uncalled for. Furthermore, the twin conditions, as laid down under Section 37 of the NDPS Act must be satisfied before extending the concession of bail. In the aforesaid decision, it has been laid down as following:-

“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.”

10. A perusal of the above makes it abundantly clear that the accused cannot be released on bail unless the material on record indicates 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. It has been further observed that the expression “reasonable grounds” means something more than *prima facie* grounds.

11. In the present case, the quantity of contraband recovered from the conscious possession of the petitioner falls in the category of commercial quantity. On seeing the police party, the petitioner had tried to throw the polythene bag containing contraband. It indicates that the petitioner was conscious of the fact that the contraband is being carried in the polythene bag. Consequently, it cannot be concluded that there are reasonable grounds for believing that the petitioner is not guilty of an

offence under the NDPS Act. Furthermore, the petitioner has been convicted in three other cases under the NDPS Act which rules out the possibility to conclude that he is not likely to commit the offence while on bail. Furthermore, the earlier application for regular bail of the petitioner has already been dismissed in terms of speaking order dated 19.08.2020. No significant change of circumstances is made out which may justify to extend the concession of bail to the petitioner. Moreover, the long incarceration cannot be termed to be a circumstance to extend the concession of bail particularly because the Courts were on restricted mode of hearing due to Covid-19 Pandemic.

12. Keeping in view the totality of circumstances, no justified ground is made out to extend the concession of bail to the petitioner.

13. Dismissed.

06.04.2021
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No