

201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41455-2020
Date of Decision: 16.03.2021

HARMEET SINGH @ BAGGI

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Karanjeet Singh Brar, Advocate
for the petitioner.

Ms. Monika Jalota, Deputy Advocate General, Punjab.

VIVEK PURI, J.(ORAL)

The matter has been taken up through video-conferencing due to COVID-19 pandemic.

Custody certificate of the petitioner has been placed on record.

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No. 97 dated 07.06.2019 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the NDPS Act') registered at Police Station Guruharsahai District Ferozepur.

Briefly, the aforesaid FIR has been registered in pursuance of recovery of 1230 tablets of Tramadol from the possession of the petitioner who was travelling on a motorcycle. On seeing the police party, the petitioner stopped the motorcycle, removed an envelope hanging from the handle of the motorcycle and tried to run away toward the fields. However, the envelope being held by the petitioner fell down. The petitioner was

apprehended and the contraband was recovered.

It has been contended by learned counsel for the petitioner that he is in custody since 08.06.2019 and conclusion of trial is likely to take some time.

On the contrary, it has been argued by learned State counsel that the quantity of contraband recovered from the conscious possession of the petitioner falls in the category of commercial quantity and the total weight of Tramadol recovered from the conscious possession of the petitioner is to the extent of 505 grams. Furthermore, the petitioner is facing trial in another case bearing FIR No. 115 of 2018 under Section 21 of the NDPS Act, Police Station Guruharshai and has been convicted in case bearing FIR No. 60 of 24.04.2017 under Section 21 of the NDPS Act, Police Station City Jalalabad.

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.”

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.

In the instant 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 untied the envelope, tried to slip into the fields, but the envelope containing contraband fell on the ground. It indicates that the petitioner was conscious of the fact that contraband is being carried by him in the envelope. 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 is also involved in two 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. 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.

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

Dismissed.

16.03.2021
smriti

(VIVEK PURI)
JUDGE

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