

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43441-2020
Date of Decision: 05.01.2021

Manoj KumarPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Abhay Kumar Sharma, Advocate,
for the petitioner.

Mr. Luvinder Sofat, Assistant Advocate General, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Cod of Criminal Procedure, for seeking grant of regular bail to the petitioner in FIR No.110 dated 22.06.2020 under Sections 22/61/85 of the NDPS Act, registered at Police Station Lalru, District Mohali.

As per the FIR, the police party while doing search of bad elements, at about 4:50 P.M, one car Mahindra bearing registration No.CH-04H-9683 appeared from the side of Lalru Mandi Overbridge, which was driven by the driver to whom the police officials stopped by indicating him then, on seeing the police party, he got perplexed and instantly returned back and thereafter, since the suspicion arose, then the head constable along with the fellow companions apprehended him and asked him about his whereabouts. Thereafter, he disclosed his name as Manoj Kumar son of Nand Lal, resident of Main Bazar, Near Dairy, Lalru Mandi (petitioner).

The police party had some suspicion that he was carrying some intoxicants material in the aforesaid car. As per further process conducted by the police, he was given a choice for being searched either through a Gazetted Officer or a Magistrate, to which, he requested for a search conducted by a Gazetted Officer and thereafter, a Deputy Superintendent of Police, who is a Gazetted Officer, was called, who also gave another choice to the petitioner as to whether he would be satisfied with the search conducted by him, who is a Gazetted Officer or by a Magistrate, to which, the petitioner stated that he will be satisfied if the Deputy Superintendent of Police, who is a Gazetted Officer, conducts the search and on search, various tablets were found from the possession of the petitioner. These tablets included 2,000 tablets of Microlit, 480 tablets of Lomotil and 02 boxes of Tramadol.

The learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case particularly in view of the fact that the aforesaid tablets were of expired date and that he has been falsely implicated on the instance of one Manju Arora, who is the tenant of the petitioner and on her instance earlier also the petitioner was implicated in another FIR No.205 dated 09.12.2018 under Sections 436/427 IPC at Police Station Lalru. He has further submitted that the procedure adopted under Section 50 of the NDPS Act was also defective because he was required to be searched by an Executive Magistrate and not by a Gazetted Officer. He has further submitted that the challan in the present case has already been presented and investigation of the case is already complete but no witnesses have been examined in the present case and therefore, the petitioner may be considered for the grant of regular bail.

Per contra, the learned State counsel has submitted that it is the case where recovery was effected from the petitioner on the spot and after complying with the procedure under Section 50 of the NDPS Act, the recovery was made. He has further submitted that since the search was made by a Gazetted Officer, the plea of the petitioner that there was violation of Section 50 of the NDPS Act would not suffice. He has further submitted that the plea of the petitioner that he should have been searched only by the Executive Magistrate would also not suffice, in view of the provisions of Section 50 of the NDPS Act. The learned State counsel further submitted that the total weight of all the tablets, which have been recovered from the petitioner are approximately 173.76 grams of Diphenoxylate Hydrochloride and 192.96 grams of Tramadol Hydrochloride and therefore, the petitioner was found in possession of the aforesaid medicines, which are part of the aforesaid contraband, which is of commercial quantity and therefore, the grant of bail is hit by bar contained under Section 37 of the NDPS Act and therefore, he is not entitled for the grant of regular bail. He has further submitted that although the challan in the present case has already been presented but the recovery was huge and therefore, the petitioner may not be granted the benefit of regular bail. He has also submitted that there is another case registered in FIR No.205 dated 09.12.2018 under Sections 436/427 IPC at Police Station Lalru, against the petitioner.

I have heard the learned counsel for the parties.

So far as the pendency of some other FIR under Sections 436/427 IPC is concerned, that would not have any bearing on the grant of

regular bail to the petitioner in the present case but the fact that the contraband of commercial quantity has been recovered from the possession of the petitioner would certainly be hit by Section 37 of the NDPS Act. The learned counsel for the petitioner has not been able to show any reason or justification as to why a departure can be made under Section 37 of the NDPS Act. The law in this regard is no longer res integra. The Hon'ble Supreme Court in **State of Kerala Vs. Rajesh, 2020 AIR(SC) 721** has held with this issue elaborately. The operative portion of the judgment passed by the Hon'ble Supreme Court is reproduced as under:-

“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.

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 object of Section 37 that in addition to the limitations provided under the Cr.P.C, 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.”

The contention raised by the learned counsel for the petitioner that due to malafide of the police officials in connivance with one Manju Arora, the present FIR has been lodged would also not carry any weight in view of the fact that it is a matter of evidence which can be seen at the time of trial but so far as the consideration of the present regular bail petition is concerned, the petitioner has not been able to show as to why a departure can be made from Section 37 of the NDPS Act.

In view of the above, no ground for concession of regular bail to the petitioner, is made out in the present case. Therefore, the present petition is dismissed.

05.01.2021
adhikari

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No