

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

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CRM-M-3728-2022.

Date of Decision: 28.04.2022.

Namita

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Vishal Nehra, Advocate for petitioner.

Mr. Deepak Bhardwaj, Deputy Advocate General, Haryana.

Lalit Batra, J.

This third petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Namita** in case FIR No.01 dated 01.01.2019 under Section 20 of NDPS Act, registered at Police Station Panchkula Sector-5, District Panchkula.

In compliance of order dated 18.04.2022, copy of FSL report dated 21.02.2019 filed by respondent-State, is taken on record.

Learned counsel for the petitioner *inter alia* contends that allegations levelled against the petitioner are altogether false and frivolous and there is no iota of truth therein. He further urges that alleged recovery of contraband (**Charas** weighing 2 kilograms 750 grams) shown at the instance of petitioner is planted one especially for the reason as petitioner alongwith her husband Deepak used to sell eatables in the street and police were demanding money from them to work in the street and on their failure to oblige the police, she has been falsely implicated in this case. He further urges that alleged recovery of contraband is highly doubtful as mandatory provisions of Section 50 of NDPS Act, were not complied with. He further

urges that no public witness was joined by the Investigating Agency at the time of alleged recovery. He further submits that petitioner is languishing in custody since 01.01.2019. He further submits that after presentation of final report as envisaged under Section 173 Cr.P.C. (*Challan*), trial has already commenced. He further urges that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and she may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that on 01.01.2019 after having received secret information, as petitioner was dealing in sale of drugs (*Charas*), information as envisaged under Section 42 of NDPS Act was sent to higher authorities. He further urges that after having made *Nakabandi*, petitioner while driving vehicle make Activa bearing registration No.HR-03W-3088, was signaled to stop and since it was suspected that she might be possessing some intoxicant substance and her personal search was to be effected, then requisite notice under Section 50 of NDPS Act was served upon her and then on her consent, Assistant Commissioner of Police, Panchkula (Gazetted Officer) was called on the spot and then in the presence of said Officer, during the personal search of petitioner, from her backpack contraband (*Charas* weighing 2 kilograms 750 grams) wrapped in a paper, was recovered. He further urges that though passersby were asked to join investigation but they had shown their inability. He further urges that sample parcel of contraband was immediately dispatched to Forensic Science Laboratory, Madhuban (Karnal) on 03.01.2019 for analysis and vide FSL report dated 21.02.2019, the sample was identified as '*Charas*'.

He further urges that contraband (*Charas* weighing 2 kilograms 750 grams), which was recovered from the conscious possession of petitioner, falls under “commercial quantity” and, thus, in view of bar created by Section 37 of NDPS Act, petitioner does not deserve the concession of bail. He further submits that after completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) has already been presented in Court and trial has commenced. He further submits that out of total sixteen (16) prosecution witnesses, only one (01) witness remains to be examined. He further urges that earnest and sincere efforts shall be made at the instance of Prosecuting Agency to conclude the prosecution evidence on 24.05.2022, date already fixed before the Trial Court.

I have heard learned counsel for the parties and have carefully gone through the record.

Hon'ble Supreme Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In case **Union of India Vs. Ram Samujh and Ors., 1999(9) SCC 429**, it has been elaborated as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and

*illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v. Chief Secy., Union Territory of Goa (1989(2) RCR(Criminal) 505: (1990) 1 SCC 95)** as under:-*

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely, (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in spirit with which Parliament, after due deliberation, has amended.”

Hon'ble Supreme Court in case *State of Kerala Etc. Versus Rajesh Etc., 2020(1) R.C.R. (Criminal) 818* while dealing with provisions of Section 37 of NDPS Act, has laid down 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 in hand, the High Court seems to have completely overlooked the underlying object 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.”

Without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that allegedly petitioner was apprehended while having conscious

possession of contraband (***Charas* weighing 2 kilograms and 750 grams**), which falls under “commercial quantity” and the fact that allegations against the petitioner are serious in nature, thus, in view of rigours of provisions of Section 37 of NDPS Act, petitioner does not deserve the concession of bail.

As a sequel to above, instant petition for grant of regular bail moved by petitioner, being devoid of merits, is dismissed. It is pertinent to mention here that as petitioner is languishing in custody for the last more than quarter past three years, the fact trial of the instant case FIR is at its fag end and speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution of India, Trial Court is directed to make earnest and sincere efforts to examine the remainder of prosecution witnesses expeditiously and to conclude the trial at the earliest while giving short adjournments.

(LALIT BATRA)
JUDGE

28.04.2022

VP/jitender

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