

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

CRM-M-4430-2022 (O&M)
Date of Decision:- 9.9.2022

Chand Singh @ Golu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Ms. Manpreet Ghuman, Advocate for the petitioner.

Mr. Sidharth Attri, AAG, Punjab
assisted by ASI Manjit

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 25 dated 10.6.2021 under Sections 21, 22 (c), 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Mehal Kallan, District Barnala.
2. The FIR in question was lodged on the basis of secret information received by a police party on 10.6.2021 during the course of patrolling, to the effect that Arshdeep Singh and Amritpal Singh along with their accomplices had formed a gang for the sale of '*heroin*' and are also in contact with drugs smugglers and gangsters, who are otherwise confined in jail. The information was further to the effect that they have recently received a huge consignment of '*heroin*' and were proceeding in a Swift Dzire car and a motorcycle on link road of Mehal Kalan.

3. Pursuant to receipt of said information, the police swung into action and intensified its search for the said persons. Two persons were seen coming from Kalal Bajra side along the bank of a drain on a motorcycle. The said persons, upon noticing the police party, tried to turn back. The person sitting on the pillion seat was carrying a black coloured bag and who alighted from the motorcycle and started running towards the drain. In the said process, one plastic polythene bag containing a white coloured material fell down. The said persons started picking up the said polythene bag but was apprehended by the police. The person, who was driving the motorcycle managed to escape. Upon enquiry, the said person disclosed the name as Amritpal Singh. Said Amritpal Singh disclosed that the person who had escaped from the spot was Arshdeep Singh. Upon checking the polythene bag which had fallen down, the same was found to contain 350 grams of intoxicant powder.
4. It is further the case of prosecution that pursuant to disclosure statements of Amritpal Singh as well as upon other evidence collected during investigation, Gurdip Singh @ Manna was arrested by the police on 11.6.2021. Further, on the basis of disclosure statement of Amritpal Singh made on 14.6.2021, Iqbal Singh @ Babbu, Vishesh Kumar @ Vishesh and Parvinder Singh @ Tiger were also nominated as accused.
5. The aforesaid Iqbal Singh was arrested on 15.6.2021 and 30 grams of intoxicant powder was recovered pursuant to his disclosure statement.
6. Arshdeep Singh was arrested on 23.6.2021 on the basis of production warrants. Arshdeep Singh disclosed that Vijay Singh @ Sony was also associated with the accused. Said Vijay Singh @ Sony was arrested on

24.6.2021 and pursuant to disclosure made by Vijay Singh @ Sony, he got recovered 380 grams of '*heroin*' which had been kept concealed by him.

7. It is further the case of prosecution that Vijay Singh @ Sony in his disclosure statement dated 25.6.2021 nominated Rajan @ Sohan Singh and Chand Singh @ Golu (petitioner). It is the case of prosecution that Chand Singh @ Golu (petitioner) was arrested on 30.6.2021 and from his possession 50 grams of '*heroin*' and another 825 loose intoxicant tablets (in broken condition) were recovered, which upon chemical analysis were found to contain 'Tramadol'.
8. The learned counsel for the petitioner has vehemently argued that the petitioner, as per the case of prosecution, has been arrested pursuant to a chain of disclosure statements and that no credibility can be attached to the disclosure statements of co-accused. The learned counsel has further submitted that even if the case for the prosecution regarding recovery of '*heroin*' and some intoxicant tablets is taken to be correct, still the case, at best, would be a case of recovery of 'non-commercial' quantity inasmuch as the '*heroin*' admittedly was found to weigh 50 grams only which is 'non-commercial' quantity and that the weight of the 825 broken loose tablets cannot be ascertained as it cannot be said that all the broken pieces of tablets were equal in shape and size and weight.
9. On the other hand, learned State counsel has submitted that the present case is not a case of nominating the petitioner as an accused on the basis of disclosure statement simpliciter but is a case where the petitioner himself was found in possession of '*heroin*' as well as 'Tramadol' and that the

Tramadol recovered would fall in the category of 'non-commercial' quantity, which disentitles the petitioner for grant of bail.

10. This Court has considered the rival submissions.
11. It is no doubt correct that a disclosure statement *ipso facto* is not a substantive piece of evidence and that the same would be required to be corroborated and substantiated by other convincing evidence. In the present case, the very fact that when the petitioner was apprehended, he was found in possession of two types of contrabands i.e. 'heroin' and 'Tramadol', substantiates the disclosure statement regarding involvement of the petitioner.
12. Another contention of the petitioner is that since the recovered tablets were in broken condition and the broken pieces would be of different sizes and weight, therefore, the total weight of the recovered tablets cannot be ascertained. However, this Court is unable to agree with the aforesaid contention. A perusal of the reply filed by the State would show that it is not a case that all the 825 tablets were broken. The same would be evident from the fact that the description of the said tablets in the FSL report clearly shows that all the 825 tablets were not in broken condition. The relevant extract from the said FSL report reads as follows :-

6.	Articles Received :	One parcel alleged to be seized from S/v Chand Singh @ Golu, sealed with one seal of 'SAD' and alleged to contain Intoxicating Tablets. Seal on the parcel was found intact and tallied with the specimen seal impression. On opening the parcel was found to contain eight hundred and twenty five (825) white coloured loose (some broken) tablets Average weight = 404. 23 mg/tablet
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7.	Purpose of reference :	Analysis and Report.
8.	Identification & Tests :	
	Ingredient present	Average quantity of ingredient present in the parcel
	Tramadol Hydrochloride	97.39 mg/tablet

13. Since only some of the tablets were broken, the remaining were apparently unbroken and the average weight of each tablet has been defined as 404.23 mg, therefore, the total weight of 825 tablets would work out to about 333 grams, which would fall in the category of ‘commercial quantity’. Consequently, the fetters imposed by Section 37 of the Act will come into play in the matter of grant of bail.
14. There is nothing on record to suggest that the petitioner has been falsely implicated. Hon’ble Apex Court in a judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under the NDPS Act is uncalled for.
15. Hon’ble Supreme Court in a very recent judgment Narcotics Control Bureau vs. Mohit Aggarwal, 2022(3) RCR(Criminal) 985, while deciding an appeal filed by Narcotics Control Bureau challenging grant of bail to an accused by the High Court, cancelled the bail while reiterating the view that provisions of Section 37 of the Act have to be strictly complied with and that mere length of custody cannot be a consideration for grant of bail. Paras 14 and 18 of the said judgment read as follows :-

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to

believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. xxx xxx xxx

16. xxx xxx xxx

17. xxx xxx xxx

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. **The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”**

(emphasis supplied)

16. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question or that in case released on bail, he is not likely to indulge in such offences again. Finding no merit in the petition, the same is hereby dismissed.

9.9.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No