

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

201

CRM-M-7047-2021.

Date of Decision: 29.04.2022.

Maninder Singh

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Manav Bajaj, Advocate for petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

Lalit Batra, J.

This second petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Maninder Singh** in case FIR No.70 dated 15.09.2019 under Section 22 of NDPS Act, registered at Police Station Nandgarh, District Bathinda.

Custody certificate dated 28.04.2022 filed by respondent-State, is taken on record.

In compliance of order dated 01.04.2022, status report dated 27.04.2022 has been received from Trial Court, in terms of which, trial of instant case FIR has already commenced.

Status report dated 28.04.2022 by way of affidavit of Gurdeep Singh, PPS, Deputy Superintendent of Police, (Rural), Bathinda, District Bathinda, along with Annexure R/1 (FSL report) filed today in the Court by respondent-State, is taken on record, and the copy thereof has been supplied to learned counsel appearing for the petitioner.

Learned counsel appearing 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 (16 bottles of Wincirex, 100 milliliters each, total 1600 milliliters) shown to be effected at the instance of petitioner is planted one. He further urges that no public witness was joined by the Investigating Agency before conducting personal search of the petitioner. He further urges that alleged recovery of contraband is highly doubtful as mandatory provisions of Sections 50 and 57 of NDPS Act, were not complied with. He further submits that petitioner is languishing in custody since 15.09.2019. 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 he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that on 15.09.2019 petitioner was apprehended while having conscious possession of contraband (16 bottles of Wincirex, 100 milliliters each, total 1600 milliliters). He further urges that sample was taken out of the entire lot and then sample parcel was sent to Forensic Science Laboratory on 18.09.2019 and vide FSL report dated 17.12.2019 (Annexure R-1), above said contraband was found containing “Codeine Phosphate” and the actual quantity of the contraband comes to 1600 milliliters, which falls under “commercial quantity” and, thus, in view

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 nine (09) prosecution witnesses, two (02) witnesses have already been examined. He further urges that earnest and sincere efforts shall be made at the instance of Prosecuting Agency to conclude the prosecution evidence at the earliest.

I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as status report furnished at the instance of respondent-State.

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.”

Allegedly, petitioner was apprehended while having conscious possession of 16 bottles of Wincirex (100 milliliters each). Vide FSL report dated 17.12.2019 (Annexure R-1), above said contraband was found containing “Codeine Phosphate” and the actual quantity thereof comes to 1600 milliliters.

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 alleged recovery of contraband (**Codeine Phosphate**) from the petitioner falls under “commercial quantity” and the fact that allegations against the petitioner are serious in nature, thus, in view of rigours of Section 37 of NDPS Act, he 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 2½ years, the fact that though trial of instant case has already commenced, speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution of India, in this scenario, 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

29.04.2022

VP/jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No