

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

CRM-M-6421-2022 (O&M)
Date of Decision:- 13.12.2022

Shamsher Singh @ Bunty, Kala ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Shivam Joshi, Advocate for
Mr. Karanjit Singh, Advocate for the petitioner.

Ms. Swati Batra, DAG, Punjab.
assisted by SI Makhan Singh.

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 115 dated 29.7.2021 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Special Task Force, Phase-4, District SAS Nagar Mohali.
2. As per the case of prosecution, on 29.7.2021 when a police party headed by Inspector Harbans Singh was present near Nakodar Road Divya Jyoti Kendra, then a secret information was received to the effect that Shamsher Singh @ Bunty @ Kala indulges in bringing '*heroin*' from drug smugglers, who smuggled the same through India-Pakistan border of Gurdaspur, Amritsar and Ferozepur and that he further supplies the same to various cities in Punjab. The information was further to the effect that the aforesaid Shamsher Singh uses mobile phone No. 99811-09791 and that on the given day he will be proceeding towards Basti Guja and Basti Sheikh Jalandhar

City by bus so as to supply '*heroin*' to his customers. It is further the case of prosecution that pursuant to receipt of said information, the police was able to nab the petitioner who was found in possession of 310 grams of '*heroin*'.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that the mandatory provisions of Section 50 of the NDPS Act have not been complied with and as such, the entire case of the prosecution falls to ground.
4. On the other hand, the learned State counsel has submitted that since the petitioner was caught red-handed while in possession of a 'commercial quantity' of contraband, no case for grant of bail is made out. It has further been submitted that since the contraband recovered from the petitioner was found to be tied in a '*Parna*', the same would not attract provisions of Section 50 of the NDPS Act. The learned counsel submits that having regard to the fact that the petitioner was found in possession of a 'commercial quantity' of contraband, no case for grant of bail is made out.
5. This Court has considered the rival submissions.
6. It is the specific case of the prosecution that pursuant to receipt of secret information by name against the petitioner, the police was able to nab the petitioner and who was found in possession of 310 grams of '*heroin*' which would fall in the category of 'commercial quantity'. The contention of the petitioner that offer in terms of Section 50 of the NDPS Act was not extended for effecting search would not carry any weight inasmuch as it is not strictly a case of recovery from personal search and is a case where the recovery is stated to have been effected from the '*Parna*' carried by the petitioner.

7. Having regard to the fact that it is a case of recovery of ‘commercial quantity’ of contraband, the fetters imposed by Section 37 of the NDPS Act will come into play in the matter of grant of bail.
8. 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.
9. 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.”

10. There is nothing on record to suggest that the petitioner has been falsely implicated or that in case released on bail, he will not commit identical offences again. As such, no case for grant of regular bail is made out.
11. The petition is sans merit and is hereby dismissed.

13.12.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No