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

CRM-M-8476-2022 (O&M)

Reserved on : 04.08.2022

Date of decision : 17.08.2022

Shubham Bhalla

....Petitioner

Versus

Union of India, Narcotics Control Bureau, Chandigarh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ruhani Chadha, Advocate for the petitioner.

Mr. Rajiv Sharma, Advocate for the respondent.

ALKA SARIN, J.

This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in Crime Case No.23 dated 06.05.2019 under Sections 8, 22, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') registered in Police Station Narcotics Control Bureau (NCB), Chandigarh.

Learned counsel for the petitioner would contend that the first bail petition of the petitioner being CRM-M-40584-2019 was dismissed as withdrawn vide order dated 17.12.2020. Learned counsel would further contend that the petitioner has been in custody for a considerably long time

i.e. since 06.05.2019. Learned counsel for the petitioner would further contend that the petitioner was not named in the secret information and that there has been a violation of Section 42 of the NDPS Act.

Learned counsel for the respondent-NCB has referred to the reply filed by the NCB wherein it has been stated that the bail petition of the co-accused being CRM-M-10050-2021 titled Jaswinder Singh Grewal Vs. Union of India was dismissed on 24.08.2021 and that of another co-accused being CRM-M-44719-2019 titled Abhishek Sharma Vs. Union Of India was dismissed on 23.09.2020. Learned counsel for the respondent-NCB has further contended that the *modus operandi* of the main accused, Abhishek Sharma, was that he purchased capsules and tablets of Tramadol Hydrochloride from the manufacturer and thereafter sold it in the open market through Gurpreet Singh, Amit Uppal, Jasvir Singh and Shubham Bhalla (petitioner herein). Recovery in the present case is 2,16,400 tablets/capsules of Tramadol Hydrochloride. It is further the contention of learned counsel for the respondent-NCB that the petitioner does not deserve the concession of bail especially in the light of the provisions of Section 37 of the NDPS Act in view of the recovery of heavy commercial quantity of narcotics. Further reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Narcotics Control Bureau Vs. Mohit Aggarwal [2022 AIR (SC) 3444]**.

Heard.

In the present case, on 16.05.2019 specific information was received by T. Anil Kumar, Intelligence Officer from a reliable source that the persons namely, Gurpreet Singh s/o Mukhtyar Singh, Amit Uppal s/o Late Sardar Ramesh Chander and Jasvir Singh s/o Late Sardar Ajaib Singh,

all aged between 40 and 45, were involved in illegal sale and purchase of contraband drug Tramadol under the NDPS Act. It was also the information received that a huge quantity of Tramadol capsules and tablets would be received by Gurpreet Singh near Raj Road Carrier in Transport Nagar, Ludhiana and Gurpreet Singh would sell this consignment to Jasveer Singh and others without sale and purchase invoice between 1500 hours to 1600 hours. The said information was reduced into writing and placed before the Officiating Zonal Director, NCB Chandigarh Zonal Unit. The NCB Team reached Transport Nagar, Ludhiana at about 1400 hours and at about 04.30 p.m. one white colour I-20 car bearing Registration No.PB-10-FD-6080 came and stopped at a little distance in front of Raj Road Carrier. One person from the driver's seat came out and went to two persons who were already present there and after some time, three persons came back with one cardboard box and placed it in the dicky of the car. As soon as the three persons closed the dicky of the car, the officials of the NCB Team reached near them and IO Rajneesh introduced himself and his team to them and asked for their introduction. One of the persons introduced himself as Amit Uppal, second person introduced himself as Shubham Bhalla (petitioner herein) and third person introduced himself as Jasvir. It was noticed that one person was sitting in the car and he introduced himself as Harpreet Singh. The NCB team asked them as to what they had placed in the dicky. At first they tried to ignore then Jasvir Singh told the team that they had kept a cardboard box in the dicky which contains Tramadol capsules. Upon asking for the bills, Amit Uppal told them that there were no bills and one associate Gurpreet Singh whose mobile number was 9517142000 who had just sometime before brought two cardboard boxes of Tramadol from Himalaya

Road Transport Company and took one box of the cardboard box from Verna car and sold the same through Shubham Bhalla (petitioner herein) to Jasvir. Thereafter, Amit and Shubham Bhalla (petitioner herein) also disclosed that Gurpreet Singh was about to come there in some time because two more boxes were lying with the Himalaya Road Transport Company. Meanwhile Maruti Van bearing registration No.PB-05-N-5677 halted in front of Himalaya Road Transport Company and Amit informed that this was the vehicle of Gurpreet Singh. Two persons alighted from the Maruti Van and went towards Himalaya Road Transport Company and came back with two cardboard boxes. The team led by IO Rajneesh and IO Rajinder Singh went near the Van and asked for their introduction after giving their own. One of the persons introduced himself as Gurpreet and second as Baljeet Singh. It transpired that the cardboard boxes also contained Tramadol for which no bills were available.

Recovery in the present case is heavy commercial quantity i.e. 2,16,400 tablets/capsules of Tramadol Hydrochloride and would attract the rigors of Section 37 of the NDPS Act. The Supreme Court in the case of **Mohit Aggarwal** (supra) has held as under:-

“15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is

for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant-NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in Tofan Singh (supra), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was not the only material that the appellant-NCB had relied on to oppose the bail application filed by the respondent. The appellant-NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic

substances in the form of tablets, injections and syrups.

Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent herein showed that they were in touch with each other.

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

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.”

In the present case the petitioner was apprehended at the spot along with with other co-accused. The recovery is heavy commercial quantity and the rigors of Section 37 of the NDPS Act are attracted in the present case. The question whether there has been compliance of Section 42 of the NDPS Act would be a matter which would be gone into at the time of trial.

In view of the above, I do not find this to be a fit case for grant of regular bail to the petitioner. The present petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Dismissed.

17.08.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO