

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

211

CRM-M-10017-2021
Date of Decision : 17.10.2022

Davinder Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Kanwaljit Singh, Senior Advocate with
Ms. Shazia K. Singh, Advocate for the petitioner.

Mr. Gurpreet Singh Sandhu, D.A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.40 dated 12.03.2020 registered under Sections 21, 22, 23, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'); Section 3 of the Indian Passport Act, 1920 and Section 14 of the Foreigners Act, 1946 at Police Station Lopoke, District Amritsar.

The above-said FIR was registered on the basis of secret information received against the petitioner-Davinder Singh and co-accused Gurlal Singh with the allegations that they are involved in smuggling of huge quantity of heroin from Pakistan with the help of their Pak counterpart Kedar Masih. On the basis of above-said information, the petitioner was apprehended from the area of Village Lodhi Gujjar. During interrogation, the petitioner has made disclosure statement and got

recovered eight packets of heroin (weighing 10 kgs.) from the disclosed place.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The secret information having been forwarded to a junior officer was in fact a direct violation of statutory provisions of Section 42 of the NDPS Act. There is no recovery of contraband from the conscious possession of the petitioner. The petitioner has been under incarceration for the last more than 02 years. Most of the prosecution witnesses are yet to be examined and the trial is moving at snail's pace which is not likely to be concluded in near future. No useful purpose will be served by further detention of the petitioner in custody. Moreover, the petitioner is not involved in any other case under the NDPS Act. On this premise, learned counsel prays for the grant of bail to the petitioner. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgments of Hon'ble Supreme Court passed in ***SLP (Crl.) No.5530 of 2022 titled as Mohammad Salman Hanif Shaikh Vs. The State of Gujarat, decided on 22.08.2022; SLP (Crl.) No.4173 of 2022 titled as Shariful Islam @ Sarif Vs. The State of West Bengal, decided on 04.08.2022, Satender Kumar Antil Vs. Central Bureau of Investigation : 2022 AIR (SC) 3386 and SLP (Crl.) No.5769 of 2022 titled as Nitish Adhikary @ Bapan Vs. State of West Bengal, decided on 04.08.2022.***

Per contra, learned State counsel opposed the petition in terms of reply dated 02.09.2021. Learned State counsel submits that recovery of huge quantity of 10 kgs. of heroin, which falls in the category

of commercial quantity, has been effected on the basis of the disclosure statement made by the petitioner. The co-accused Gurlal Singh has been absconding and evading his arrest and the trial is being delayed for that reasons only.

I have heard learned counsel for the petitioner as well as the learned State counsel and gone through the paper-book.

According to the prosecution, the petitioner-Davinder Singh was apprehended from the area of Village Lodhi Gujjar and two mobile phones and Rs.300/- were recovered during his personal search. During interrogation, the petitioner disclosed that co-accused Gurlal Singh is his real brother-in-law. Gurlal Singh and his brother Surjit Singh are involved in drug trafficking for a long time and they are involved in many cases registered under the NDPS Act. Gurlal Singh told the petitioner that he (Gurlal Singh) has links with smugglers of Pakistan and he allured him (petitioner) by saying that he should also join them in drug smuggling. Therefore, he (petitioner) about one month ago had asked co-accused Gurlal Singh for providing him 2-4 packets of heroin so that he (petitioner) could also earn money. On that day he (petitioner) had come there for lifting the consignment, which was to be delivered further as per instruction of co-accused Gurlal Singh. On the basis of disclosure statement suffered and identification made by the petitioner 08 bags (weighing 10 kgs heroin) were recovered in the presence of the then D.S.P. Attari, Amritsar (Rural) and officials of B.S.F. from the fields of wheat across fencing in the area of B.S.F. Post Shamullha which were taken into possession in accordance with law. The petitioner further

disclosed that only his brother-in-law Gurlal Singh knows that who was the consignee of the consignment of heroin. The samples of the contraband recovered were sent for scientific examination and as per FSL report '*Diacetylmorphine*' (heroin) was found therein. The mobile phones recovered from the petitioner have been sent to the State Cyber Crime Cell for retrieval of data. Challan has already been presented before the trial Court and charges under Sections 21, 23 and 29 of the NDPS Act have been framed on 22.02.2021 by the trial Court and the case is now fixed for prosecution witnesses.

During further investigation carried out under Section 68-E, it was revealed that the petitioner has purchased two residential houses, one situated at Village Manawala and second at Village Rayya, District Amritsar, with drug trafficking money. The competent authority gave appropriate opportunity to the petitioner to defend his case but he did not appear. Consequent upon, vide order passed under Section 68-F(2) of the NDPS Act, it was further directed that the above-mentioned property shall not be transferred or otherwise dealt with, in any manner, except with the prior permission.

Section 37 of the Act provide a stringent provisions for grant of bail in cases of involving commercial quantity.

The Supreme Court in *Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19th July, 2022*, held as under:

"10. The provisions of Section 37 of the NDPS Act read as follows:

“[37. Offences to be cognizable and non-bailable.(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under

section 19 or section 24 or section 27A and also for offences

involving commercial quantity] shall be released on bail or on his

own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In **“Collector of Customs, New Delhi v. Ahmadalieva Nodira”**, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. **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.”
[emphasis added]

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 chargesheet 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."

The allegations against the petitioner are very serious in nature which needs no leniency at this stage. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking. Hon'ble Supreme Court in its judgment passed in ***Union of India Vs. Ram Samujh : 1999(4) RCR (Criminal) 93*** has observed as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable; it causes deleterious effects and 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 Narcotic Drugs And Psychotropic Substances Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v. Chief Secretary, Union Territory of Goa , 1989(2) RCR (Crimina l) 505 : 1990(1) SCC 95** as under :-*

"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 sizable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion 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, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1995 specifying mandatory minimum imprisonment and fine."

So far as, the argument of learned counsel for the petitioner that the petitioner is in custody for last about 02 years is concerned, Hon'ble Supreme Court in its judgment passed in **Mohit Aggarwal's Case (supra)** has observed that custody period itself alone cannot be a ground for grant of bail.

Without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the facts that the alleged contraband recovered on the basis of disclosure statement and identification made by the petitioner falls in the category of 'commercial' quantity which attracts rigors of Section 37(1)(b) of the NDPS Act and the fact that co-accused Gurlal Singh has been absconding and evading his arrest which is the main reason for delaying the trial, I

am of the considered view that the petitioner does not deserve the concession of regular bail.

The present petition is dismissed accordingly.

17.10.2022

(ASHOK KUMAR VERMA)

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JUDGE

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