

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-10585 of 2022

Date of Decision: 16.03.2022

Rahul Bhardwaj

... Petitioner(s)

Versus

Director of Revenue Intelligence

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vishal Deep Goyal, Advocate
for the petitioner(s).

Mr. Sunish Bindlish, Advocate
for the respondent

Anil Kshetarpal, J.

1. This is the petitioner's third attempt to get regular bail, pending trial in a criminal complaint No. 31 dated 05.11.2014 (now bearing NDPS Act No. 774 dated 05.11.2014, titled as "Parminderjit Singh Gill and Others v. Intelligence Officer, Directorate of Revenue Intelligence (Zonal Unit), 51-D, Sarabha Nagar, Ludhiana", under Section 2, 8, 9, 21, 22, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the 1985 Act").

2. The first petition, filed by him for the grant of regular bail, was dismissed on 01.09.2020 with the following order:-

"The petitioner has filed the present petition under Section 439 Cr.P.C for grant of regular bail to the petitioner in complaint case no.31 dated 5.11.2014 (now bearing NDPS Act No.774 dated 5.11.2014) titled as 'Parminderjit Singh Gill vs.

Intelligence Officer, Directorate of Revenue (Zonal Unit) 51-D, Sarabha Nagar, Ludhiana' under Section 2, 8, 9, 21, 22, 27-A, 29 of Narcotics Drugs and Psychotropic Substances Act, 1985 (charges framed under Section 22, 27-A, 29 of NDPS Act, 1985 vide order dated 16.5.2015).

The brief facts of the case have been noticed by the learned Special Court, Ludhiana in para 5, which is extracted as under:-

“5. The present complaint has been registered against the applicant/accused. The allegations against the applicant/accused are that one card board box was recovered containing two packets out of which one pouch was Silver Colour Foil Pouch (8” to 12” approximately) containing White Colour Powder. The other packet was a Transparent Polythene Packet (8” to 12” approximately) also containing White Colour Powder, which was recovered from the possession of co-accused and was sent by the present applicant/accused to the co-accused. Both the packets were found to be containing White Colour Powder weighing 1.020 Kilograms and 1.012 Kilograms respectively. As per report of Chemical Examiner, Central Revenues Control Laboratory, New Delhi, it was opined that the samples sent to it for analysis were found to be of Ketamine Hydrochloride. The applicant/accused failed to produce any valid license or permit for possessing and sending the recovered

contraband. Perusal of record reveals that the applicant has booked the consignment and that he is the main accused.”

On the one hand, learned counsel for the petitioner has contended that the petitioner is in custody for a period of 8 years whereas on the other hand, learned counsel for the respondent has contended that in the present case, the petitioner is in custody since 2015. It may be noted here that as per the case of the respondent, 100.462 kg Ketamine and Rs. 70.50 lakhs were allegedly recovered from the residence of the petitioner at Jaipur. No doubt, the petitioner has been granted bail by the High Court at Jaipur.

Learned counsel for the petitioner has also contended that the recovered psychotropic substance does not fall under the NDPS Act whereas on the other hand, learned counsel for the respondent has contended that in view of Section 2 (xxiii) the Ketamine hydrochloride would fall within the scope of the Narcotics Drugs and Psychotropic Substances Act, 1985.

It is not disputed that the trial of the case is in progress. At this stage, it would not be appropriate for this Court to make any observation on merits of the case. At present, it cannot be overlooked that as per the stand of the respondent more than 100 kg Ketamine was recovered from the residence of the petitioner at Jaipur, which of course, is subject matter of a separate case.

inclined to grant bail to the petitioner, particularly, when the trial of the case is in progress.

Hence, dismissed”.

3. The second petition was dismissed on 16.12.2020. The Special Leave Petition, filed by the petitioner, has also been dismissed.

4. The learned counsel representing the petitioner contends that in view of the provisions of Section 436A of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”), the petitioner is entitled to be released on bail. He further submits that the petitioner has already suffered incarceration for a period of more than nine years.

5. Per contra, the learned counsel representing the respondent contends that Section 436A Cr.P.C. does not override the provisions of Section 37 of the 1985 Act. He, while drawing the attention of the Court to Section 37 of the 1985 Act, submits that it starts with a non-obstante clause, therefore, it cannot be invoked in a case under the 1985 Act. He further contends that the petitioner has not suffered incarceration for a period of half of his sentence to invoke the provisions of Section 436A Cr.P.C.

6. It has also been brought to the notice of the Court that co-accused of the petitioner filed a revision petition in the High Court in which passing of the final order has been stayed. It was for this reason, the trial got delayed and now it has already recommenced. It is obvious that Section 436A Cr.P.C. is a provision incorporated in the Cr.P.C. In the present case, the alleged offence is under the 1985 Act, which is a special Act. Ordinarily, Section 37 of the 1985 Act bars the grant of bail in the case the recovery falls in the category of commercial quantity. It starts with a non-obstante

436A Cr.P.C., which is a general provision. It is a settled legal principle that the special provisions override the general provision, when it comes in question, as to what law will be applied.

7. Furthermore, the petitioner does not fulfill the requirement of Section 436A Cr.P.C. Hence, no ground is made out to grant regular bail to the petitioner. Consequently, the present petition is dismissed.

(Anil Kshetarpal)
Judge

March 16, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No