

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

201

CRM-M-12683-2021 (O&M)

Date of decision: 02.04.2022

AVTAR SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Vipul Jindal, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

1. The question that arises for consideration in the instant petition is as regards the extent of satisfaction of Court about reasonable grounds, as prescribed under Section 37 (1)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 while considering an application for bail.

2. The instant petition has been filed under Section 439 Cr.P.C by the petitioner for seeking concession of regular bail in case FIR No. 62 dated 20.05.2020 under Sections 21 and 29 of the NDPS Act, 1985 registered at Police Station STF Mohali.

3. A perusal of the FIR shows that a secret information was received by ASI Kashmir Singh on 20.05.2020 that one Deputy Singh son of Bagicha Singh and Avtar Singh son of Balwinder Singh (petitioner herein) are doing the business of selling of heroin and contraband called ice and that they deliver the same in Amritsar. It is noted that the petitioner had allegedly acquired the contraband from

Deputy Singh on 19.05.2020 and had to come to Amrtisar to deliver the same in the area of Maqbulpura and that in case a Nakabandi is done he has been apprehended. Finding the information to be reliable, noticing that being in the local rank of ASI he did not conduct investigation under the NDPS Act, he shared the same with SI Davinder Singh. Upon receipt of the said information the Sub Inspector reduced the same in to writing as a part of the police proceeding and sent the same to the Police Station for registration of the FIR, thereafter, a Nakabandi was carried out near the closed shops of Improvement Trust in Guru Teg Bahadur Nagar in the area of Maqbulpura at around 2:10 p.m. It is contended that after some time a person as prescribed in the secret information was seen comment from the vallah Mandi fatak and was apprehended with the help of officials and disclosed his name as Avtar Singh. The Sub Inspector introduced himself and made an offer of search in terms of Section 50 of the NDPS Act on which the petitioner is stated to have exercise the option of getting his search conducted from Gazetted Officer. SI Davinder Kumar claims to have disclosed all the facts of the case to Sh. Vevinder Kumar, DSP, STF on his mobile phone and requested him to come at the spot. After some time DSP Vevinder Kumar came present at the spot and again SI Davinder Kumar disclosed all the facts of the case at which the DSP introduce himself to the petitioner and made the offer in terms of Section 50 of the NDPS Act. The petitioner is stated to have exercise the option to conduct of search in the presence of DSP whereafter the memo of consent was reduced in writing and signatures of the petitioner were obtained in the presence of witnesses and verified by the DSP himself. The search was

thereafter conducted relate to recovery. The recovered contraband was weighed and a separate plastic box parcel was prepared which was sealed by SI Davinder Kumar by his seal 'DK' and by the seal of the DSP as 'VK'. The intoxicant parcel containing the substance (Ice) was also weighed and sealed in a similar fashion. A memo of recovery was thereafter prepared which was signed all the Police officials and given to the DSP for his verification. A further search of the petitioner was conducted leading to recovery of 5 notes of 100 rupees each and a mobile phone from his possession for which a separate memo of personal search was prepared. Thereafter, interrogation was done by SI Davinder Kumar and then an information about arrest of Avtar Singh was sent to Jagdish Singh on his mobile number and a separate memo in this regard was prepared.

4. Learned counsel appearing on behalf of the petitioner has vehemently argued that the petitioner has been falsely implicated in the aforesaid FIR at the hands of ASI Kashmir Singh and other Police officials. The entire story set-forth by the prosecution is framed and had been set up to arraign the petitioner. In this regard, he has drawn attention to the proceedings recorded in the FIR (Annexure P-1) as per which, the secret information was received by the ASI on 20.05.2020. He further contends that the said information is shared by the ASI Kashmir Singh with SI Davinder Kumar of STF on 20.05.2020. He has drawn attention of the Court to the Ruka sent by the Sub Inspector Davinder Kumar and that the timing recorded in the said **Ruka is 2:10 p.m. on 20.05.2020.**

5. In order to substantiate his arguments, learned counsel has

thereafter referred to the final report filed by the Police under Section 173 Cr.P.C. and has pointed out that as per the final report, nakabandi was thereafter carried out and the petitioner is claimed to have been apprehended on 20.05.2020 itself. It is pointed out that as per the proceedings recorded in the final report, DSP Vavinder Kumar posted in the STF, Border Range, Amritsar was called as a Gazetted Officer to carry out personal search of the accused-petitioner herein after the petitioner exercised option in terms of Section 50 of the NDPS Act. He reached the spot after some time and again gave an option to the petitioner. The alleged contraband was thereafter recovered. As the petitioner had to be taken in custody after effecting recovery of the contraband, information as regards his arrest had to be conveyed to his friend/relative as desired by petitioner. It is pointed out that as per the final report, information regarding the arrest of the petitioner-Avtar Singh was sent on Mobile No. 99142-13713 of Jagdish Singh who happens to be Uncle's son (Cousin) of the petitioner. To take the arguments further, learned counsel has thereafter referred to the reply filed by way of affidavit of Vavinder Kumar, Deputy Superintendent of Police, Special Task Force, Border Range, Amritsar wherein it has been so reiterated by the DSP that the information of the arrest of the petitioner was duly given on the Mobile phone number of Jagdish on 20.05.2020 at 13:48:38 i.e. 1:48 p.m.

6. Learned counsel argues that the information of arrest to Jagdish could not have preceded Ruka having been sent to the Police for registration of FIR after receipt of information. He thus submits that the Ruka regarding secret information having been sent on the same

day at 2:10 p.m., the possibility of the information regarding arrest of the petitioner could not have been sent at 1:48 P.M. He points out that it is thus evident that the petitioner was already in custody of the Police at the time when this entire documentation was prepared against the petitioner.

7. He has further argued that as a matter of fact, the petitioner was arrested on 19.05.2020 itself from his village Marhi Megha on account of the rival factions and has drawn attention to the call details of the Investigating Officer, got summoned by the Court, and appended with the petition as Annexure P-6 to show that the mobile phone of Sub Inspector Davinder Kumar bearing No.82880-42950 showed the presence of the Sub Inspector Davinder Kumar in village Mari Megha, Tehsil Patti, District Tarn Taran at 4: 23 p.m. and was also shown to be present in the said village till 4:45 p.m. He says that the petitioner was picked up from the village at that point of time and that the instant case has been foisted on him on 20.05.2020 on account of malice, mischief and political rivalry. The recovery was never effected in the manner suggested by the prosecution.

8. Learned counsel has also submitted that the samples were sent for examination by the FSL after 20 days and no explanation has been furnished as to why the sample was retained by the Police for such a long duration. It is also pointed out that the petitioner has been in custody for a period of more than 01 year and 10 months and that no prosecution witnesses has been examined so far.

9. Ms. Samina Dhir, DAG, Punjab controverts the contentions and submits that the functioning of the STF is conducted in

a different process and that the mobile phone numbers are kept in pool and the same are usually rotated amongst various members of the STF. She further vehemently argues that recovery of commercial quantity has been effected from the petitioner and that the application cannot be considered in view of the bar under Section 37 of the NDPS Act. She further submits that all the arguments being raised by the petitioner are a matter of trial and the same shall be examined by the Court at an appropriate stage. It is also submitted that yet another FIR No. 54 was registered on 17.06.2017 under Section 21 of the NDPS Act at Police Station Khalra, District Tarn Taran, Punjab and as such he is a habitual offender.

10. Learned counsel appearing on behalf of the petitioner has rebutted that in the said case no recovery of any nature had been effected from the petitioner and that he is already on bail in the said case. He submits that fake and malicious implication is writ large.

11. The parties are however, no aware about the stage of the trial in the said case bearing FIR No. 54 dated 17.06.2017 (supra).

12. I have considered the arguments advanced by the learned counsel appearing on behalf of the respective parties.

13. The mandate of Section 37 on which reliance have placed by learned State Counsel prescribes following twin conditions after grant of hearing to the State counsel:

- i) The satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty;
- ii) That he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and

the accused cannot be released on bail.

14. The first condition would require a discussion as to what would constitute 'reasonable grounds for the Court to be satisfied to believe that the accused not guilty and the second condition is that he is not likely to commit any offence while on bail.

15. The language of the statute uses three expressions viz. i) Court is satisfied; ii) reasonable grounds, and iii) for believing that accused is not guilty. Hence, the statute does not prohibit a Court from exercising its jurisdiction, but only prescribes certain guidelines to be taken into consideration while exercising such jurisdiction. The parameters prescribe “reasonable grounds to the satisfaction of the Court to relieve. It does not prescribe the requirement of regarding reasons in writing to establish that an accused is innocent”. Hence it is the subjective satisfaction of the Court based on an objective assessment of the material brought before it for giving a reasonable ground to sustain a belief. The requirement prescribed by statute can not be assigned a meaning and interpretation that prohibits grant of bail or that the Court must record reasons displaying satisfaction about an accused being innocent. Section 37(1)(b) is a provision empowering a Court to grant bail and is not a disabling provision to prohibit a Court of Law. The interpretation to be thus assigned to a statutory provision must be in conformity with the statutory object and not run contrary to it. It must also be kept in mind that if the legislature intended to deny bail to an accused, it could have expressly prescribed so.

16. It would now be essential to advert to certain precedent dealing with the said aspect. The Hon'ble Supreme Court held in the

matter of “Collector of Customs, New Delhi versus Ahmadaliev Nodira” in Criminal Appeal No. 312 of 2004 decided on 11.03.2004 reported as (2004) 3 Supreme Court cases 549 observed as under:-

“As observed by this Court in Union of India v. Thamisharasi & Ors. (JT 1995 (4) SC 253) clause (b) of sub- section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are (1) an opportunity to the public prosecutor to oppose the bail application and (2) satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

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 the present accused-respondent is concerned, are (1) 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 for 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.”

17. The Hon'ble Supreme Court held in the matter of “Union

of India versus Shiv Shanker Kesari” in Criminal Appeal No. 1223 of 2007 decided on 14.09.2007 reported as (2007) 7 Supreme Court cases 798 observed as under:-

“7. The expression used in Section 37 (1)(b) (ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable'.

“7.....Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.

(See: Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar and another (1987) 4 SCC 497. and Gujarat Water Supplies and Sewerage Board v. Unique Erectors (Gujarat) Pvt. Ltd. and another [(1989) 1 SCC 532].

9. “9.....It is often said "an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space". The author of 'Words and Phrases' (Permanent Edition) has quoted from in re Nice & Schreiber 123 F. 987, 988 to give a

plausible meaning for the said word. He says,

"the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined".

It is not meant to be expedient or convenient but certainly something more than that.

10. The word 'reasonable' signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See: Municipal Corporation of Greater Mumbai and another v. Kamla Mills Ltd. (2003) 6 SCC 315).

11. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.

*18. The Hon'ble Supreme Court held in the matter of **"Union of India** versus **Rattan Mallik alias Habul**" in **Criminal Appeal No. 137 of 2009** decided on 23.01.2009 reported as **(2009) 2 Supreme Court cases 624** observed as under:-*

"13.The expression `reasonable grounds' has not been defined in the said Act but means something more than

prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari²] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

19. The guidelines prescribed in the judgment of **"Union of India versus Shiv Shanker Kesari"** (*Supra*) have been followed in the matter of **"Union of India through Narcotics Control Bureau versus Md. Nawaz Khan"** reported as **(2021) 10 SCC 100**.

20. It is evident from a perusal of the above that Court is not called upon to record a finding of not guilty and it is only required to see if there are reasonable grounds of its belief. It does not mandate the

Court to enter into a domain as if its pronouncing a judgment of

acquittal and recording a finding of not guilty such an exercise, if conducted by the Court is likely to defeat the prosecution case even before a trial is concluded.

21. The second parameter that has to be considered is the belief of the Court about the accused not likely to commit any offence while on bail.

22. The facts of the case as emphasized by the petitioner show that the petitioner had already been taken in custody by the Police on 19.05.2020 as the presence of the Sub Inspector of the Special Task Force in the village of the petitioner is duly reflected.

23. On a pointed query raised to the learned counsel appearing on behalf of the State with respect to the telephone number claimed to be used by Sub Inspector Davinder Kumar and as to whether on 19.05.2020, the said mobile phone was being used by Sub Inspector Davinder Kumar at the time of 4:23 p.m. onwards, learned State counsel has not been able to controvert the same. It thus does not advance the case of the prosecution to submit that the mobile numbers are kept in Pool to be used by the all the members of the STF. There is also no denial of the fact that on the date of 19.05.2020, the said phone number was being used in village Marhi Megha. The counsel appearing on behalf of the State not given any explanation as to under what circumstances the STF Team was present at village Marhi Megha and the purpose behind such visit. No valid explanation has also been tendered by the learned State counsel as to how the information as regards the arrest could have preceeded the sending of Ruka. The aforesaid circumstances cumulatively form reasonable grounds for

belief by the Court that the document prepared by the Police may not reflect true genesis. The timings are crucial and have been significantly recorded and relied on by the Police in its final report as also in its reply.

24. The same now leads to the second condition as regards an accused not likely to commit any offence while on bail. The argument of the prosecution is based solely on the strength of the earlier case registered against the petitioner. They have however not been able to controvert that no recovery had been effected from the petitioner in the earlier case and the recovery effected in the present case has to be seen in light of the surrendering circumstances noticed above. The instant case has been registered after a lapse of nearly 3 years of the previous case. There is nothing to suggest that petitioner was involved in the said trade during the intervening period. There is no other criminal antecedents or involvement of the petitioner in any other case as well. Existence of the above said two cases is not sufficient to hold that petitioner is a habitual offender and is most likely to engage in repetition of the offence in case enlarged on bail. The isolated instances over long durations of time render likelihood of repeat crime bleak. Any remote possibility of future involvement is not the same thing as 'likelihood' to commit any offence. The possibility coupled with huge probability gives rise to 'likelihood' of commission of offence. In the absence of either of the two it cannot be said that there would be a 'likelihood'.

25. The benefit thereof has thus to be extended to the accused.

Besides, the petitioner has already served an actual sentence of 01 year

and 10 months with no witness having been examined so far. A bail petition is not to be rejected solely as a means of inflicting sentence. Article 21 of the Constitution of India prescribes speedy justice. There is a presumption of innocence till a person is proved guilty. Equitable rights of the accused have to be balanced and liberties of an individual have to be given due regard. Hence, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

26. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate, concerned.

27. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

28. The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 02, 2022
vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No