

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-12921-2021 (O&M)
Date of Decision:-25.8.2022

Shubham @ Bomb

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Manjinder Singh Saini, Advocate for the petitioner.

Ms. Swati Batra, DAG, Punjab,
assisted by ASI Dilbag Singh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide FIR No.0122 dated 19.11.2019, Police Station Division No.4, District Ludhiana, Punjab, under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985.
2. As per the FIR, on 19.11.2019, during the course of *naka bandi*, the police received secret information to the effect that Shubham Kumar (petitioner) and Abhishek indulged in sale of '*heroin*' and that on the said day, they were coming in a silver coloured Swift vehicle bearing Registration No. PB-10BV-5773 and that in case barricading is raised, a large quantity of '*heroin*' could be seized from them. Pursuant to receipt of said information Inspector

Praveen Randev, Incharge CIA-2, Ludhiana was apprised telephonically and was requested to come. It is further the case of prosecution that Praveen Randev, Incharge CIA-2, Ludhiana and Shri Surinder Mohan, Assistant Commissioner of Police, Ludhiana came to the spot where barricading was raised. After a short while, a silver coloured Swift vehicle came towards the barricade but upon noticing the police, the driver of the car tried to turn around but the car was apprehended by the police and the two persons sitting therein, upon enquiry, disclosed their names as Shubham Kumar and Abhishek. The said persons were extended an offer in terms of Section 50 of NDPS Act. It is further the case of prosecution that a black coloured bag was recovered lying near the handbrake of the vehicle in between the driver seat and the front passenger seat, which was found to contain 2 kilograms and 400 grams of 'heroin'.

3. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the present case and that mandatory provisions as mandated by Section 42 of NDPS Act have not been complied with inasmuch as though it is a case of recovery pursuant to receipt of secret information but the same was never taken down in writing. Learned counsel for the petitioner, in order to hammer forth his aforesaid submissions, places reliance upon a judgment passed by this Court in CRM-M-25498-2021 titled Pankaj Vs. State of Punjab decided on 14.6.2022.
4. Learned counsel for the petitioner further submitted that the petitioner otherwise has been behind bars since the last about 2 years and 9 months and, as such, the petitioner in any case deserves the concession of regular bail particularly when no prosecution witness has been examined till date. Learned counsel for the petitioner has pressed into service orders passed by

Hon'ble the Supreme Court i.e. order dated 4.8.2022 passed in SLP (Criminal) No.4173 of 2022 titled Shariful Islam @ Sarif Vs. State of West Bengal; order dated 22.8.2022 passed in SLP (Criminal) No.5530 of 2022 titled Mohammad Salman Hanif Shaikh Vs. The State of Gujarat; order dated 1.8.2022 passed in SLP (Criminal) No.5769 of 2022 titled Nitish Adhikary @ Bapan Vs. The State of West Bengal and order dated 5.8.2022 passed in Criminal Appeal No.1169 of 2022 titled Gopal Krishna Patra @ Gopalrusma Vs. Union of India, wherein bail has been granted in cases where accused had been in custody for a period of less than 2 years.

5. On the other hand, learned State counsel has vehemently opposed the petition on the ground that since it is a case of recovery of 'commercial' quantity of contraband, no case for grant of bail is made out. It has also been informed that the petitioner otherwise stands involved in 7 other cases for offences under Indian Penal Code and Prisons Act.
6. I have considered rival submissions addressed before this Court.
7. As far as contention of the petitioner as regards non-compliance of Section 42 of NDPS Act is concerned, Hon'ble the Supreme Court in a case reported as 2021(10) SCC 100 Union of India through Narcotics Control Bureau, Lucknow versus Md. Nawaz Khan, wherein issue of non-compliance of Section 42 of Act was argued for grant of bail, held as under:

“29. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS

Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial.”

In this regard, a reference may also be made to a recent judgment of this Court rendered in CRM-M-16114-2022 titled Sant Lal @ Vicky Versus State of Punjab decided on 5.8.2022.

8. As far as the contention of the petitioner regarding grant of bail on the strength of his long custody, this Court does find that the petitioner has been behind bars for a substantial period of 2 years and 9 months but having regard to the fetters imposed by Section 37 of NDPS Act and while also noticing that the petitioner otherwise has a chequered record, it will not be appropriate to release him on bail.
9. No doubt, Hon’ble the Supreme Court in a couple of cases as have been cited by learned counsel for the petitioner, has released certain accused on bail, who had put in barely about 1½ years of custody but each case has to be decided on its own facts. Still further, this Court finds that in the said cases, the fetters imposed by Section 37 of NDPS Act have not been discussed. 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.”**

(emphasis supplied)

10. Hon’ble Apex Court in 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has also 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 NDPS Act is uncalled for.

11. It is a case where there was specific information against the petitioner even prior to registration of the FIR to the effect that he indulged in sale of 'heroin' and that on the given date was coming alongwith his co-accused while carrying 'heroin'. The aforesaid information was found to be correct

inasmuch as both the accused were actually apprehended while in possession of 2 kilograms and 400 grams of 'heroin'. It is not a case of chance recovery of 'heroin' from a vehicle in which case under some circumstances, it may be said that it is only the driver who could be said to be having domain over the contraband. In the present case, in view of the specific prior information by name against the accused which has been duly substantiated from the factum of recovery of a 'commercial' quantity of contraband, his complicity is *prima-facie* evident. There is nothing on record from which it could be inferred that he has been falsely implicated. Further, his chequered record of being involved in several criminal cases puts Court at a caution and there is hardly any assurance that the petitioner, in case granted bail, will not indulge in similar offences again. Consequently, in view of fetters imposed by Section 37 of NDPS Act, no case for grant of bail is made out. The petition is sans merit and is hereby dismissed.

12. However, keeping view the fact that the petitioner has been behind bars for a substantial period of 2 years and 9 months and trial has not even commenced till date, this Court deems it appropriate to issue the following directions:

- (i) The trial Court shall frame a schedule of dates in advance for summoning the witnesses and shall also endeavour to record the statements of the PWs whose presence is duly secured. Special Messengers be deputed for securing the presence of the PWs. If deemed necessary, a letter may be written to the Senior Superintendent of Police, concerned, for getting the needful done for ensuring timely presence of PWs.
- (ii) The prosecution is directed to ensure the presence of all the PWs before the trial Court on the dates as

may be fixed by the trial Court for recording prosecution evidence. The District Attorney concerned to take necessary steps for the purpose of securing the presence of the remaining PWs.

25.8.2022

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No