

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

CRM-M-18872-2021 (O&M)
Date of Decision:- 1.9.2022

Vishav Nath Sethi @ Vicky

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. R.P. Kaushal, Advocate for the petitioner.

Mr. Sidharth Attri, AAG, Punjab
assisted by SI Dharam Singh.

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 223 dated 16.9.2019 under Sections 21, 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Canal Colony, Bathinda, District Bathinda.
2. As per the case of prosecution, on 16.9.2019 when a police party headed by ASI Amrinder Singh was patrolling in the area of Canal Colony, Bathinda then at about 10:30 p.m., a black coloured car was seen parked on a track by the side of a canal. Three persons were standing near the bonnet of the car in a suspicious manner and were looking into a polythene envelope. The said persons were apprehended by the police party on the basis of suspicion alongwith a pink coloured polythene bag. Since the place was secluded, being a canal track, no witness could be found or associated. Upon inquiries

made by the police, the said persons disclosed their names as Ravi Kumar, Ishant Kumar and Vishav Nath Sethi. Upon checking the transparent polythene envelope, intoxicant tablets were recovered apart from another smaller white coloured polythene pouch containing 'heroin' which upon weighment was found to be 30 grams. The tablets recovered were in the shape of 125 strips of PROZOLAM 0.5 with each strip containing 10 tablets i.e. a total of 1250 tablets (containing 'Alprazolam').

3. The learned counsel for the petitioner has submitted that a false case has been foisted upon the accused and that in any case, the petitioner cannot be attributed conscious possession of the contraband allegedly recovered. It has further been submitted that since the contraband, in any case, was recovered from a transparent polythene bag, therefore, in view of the judgments passed by this Court in identical cases, the petitioner deserves to be released on bail. The particulars of the said judgments pressed into service are hereinunder :-

- (i) CRM-M-6433-2018 – Pawan Kumar vs. State of Punjab
- (ii) CRM-M-14474-2020 – Dharminder Singh vs. State of Punjab
- (iii) CRM-M-13662-2020 – Niranjana Kumar vs. State of Punjab
- (iv) CRM-M-21020-2020 – Amritpal Singh Lamberdar vs. State of Punjab
- (v) CRM-M-16380-2020 – Buta Singh vs. State of Punjab
- (vi) CRM-M-52686-2021 – Manpreet Singh @ Money vs. State of Punjab

4. The learned counsel for the petitioner has further submitted that the petitioner otherwise has been behind bars for a substantial period of 1½ years and as such, deserves the concession of bail.

5. Opposing the petition, the learned State counsel has submitted that since the petitioner has been found in possession of a 'commercial quantity' of

contraband and keeping in view the restrictions imposed by Section 37 of the NDPS Act, no case for grant of bail is made out.

6. I have considered rival submissions addressed before this Court.
7. The contention of the petitioner that the recovery had been effected from a transparent polythene bag would entitle him to bail cannot be accepted keeping in view the fact that it is not a case that the recovery was effected from a prominent place in broad day light. Rather, the recovery was effected from a secluded place i.e. a track by the side of a canal and that too at about 10:30 p.m. In these circumstances, even if the accused were carrying contraband in a transparent polythene bag, it cannot be said that the same would have exposed them to detection at that point of time so as to justify extending any benefit to them on this count. The submission raised in this regard, as such, is found to be devoid of merits and is hereby repelled.
8. As far as the contention as regards the petitioner not being in conscious possession of the contraband is concerned, the fact that all the three accused were found together in a secluded place in the dead of a night and were handling a polythene bag, is sufficient to attribute conscious possession of the contraband recovered to each of the three accused.
9. Since it is not a case of recovery from personal search, Section 50 of the NDPS Act would not have any application. Further, since the recovery was not even based on secret information, even Section 42 of the Act would not be attracted in the present case. It is a case of recovery of 30 grams of '*heroin*' apart from 1250 tablets of PROZOLAM, the total weight of which works out to more than 100 grams. The quantity defined as 'commercial quantity' of ALPRAZOLAM is 100 grams. As such, the petitioner having

been found in possession of 'commercial quantity' of contraband, the fetters imposed by Section 37 of the Act in the matter of grant of bail would be attracted.

10. There is nothing on record to suggest that the petitioner has been falsely implicated. Hon'ble Apex Court in a judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has 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 the NDPS Act is uncalled for.

11. 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)

12. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question or that in case released on bail, he is not likely to indulge in such offences again. Finding no merit in the petition, the same is hereby dismissed.

1.9.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No