

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

CRM-M-17671-2022 (O&M)
Date of Decision:- 5.12.2022

Gandhi Ram

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. D.N.Ganeriwal and Mr. Kanisth Ganeriwal, Advocates
for the petitioner.

Mr. Siddharth Attri, AAG, Punjab
assisted by ASI Manjit Singh

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 3 dated 20.1.2021 under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Khuian Sarwar, District Fazilka.
2. As per the case of prosecution, on 20.1.2021 when a police party headed by ASI Sahib Singh, Anti-Narcotic Cell, Fazilka Camp, Abohar was present at Police Station Patti then a secret information was received by ASI Sahib Singh to the effect that Gandhi Ram (petitioner) indulges in sale of 'opium' and brings the same from Rajasthan and Haryana. The information was further to the effect that he had stored 'opium' in his house. Pursuant to receipt of said information, a raid was conducted at the house of Gandhi Ram (petitioner) and a white coloured polythene bag containing 'opium' was recovered from a kit bag which was lying in a wooden almirah. Upon weighment, the 'opium' was found to weigh 2.750 kilograms. It is further

the case of prosecution that currency notes worth ₹90,000/- were also recovered.

3. The learned counsel for the petitioner submitted that the petitioner has falsely been implicated in the present case and that it is a case where the police has fabricated documents so as to build up a false case against the petitioner. The learned counsel has submitted that though it is a case of receipt of prior secret information by the police but despite the same, there has been no compliance of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short hereinafter referred to as 'the Act'). The learned counsel has submitted that although there is no reference to the compliance of Section 42 of the Act in the challan filed under Section 173 Cr.P.C., a copy of one such report has been annexed with the challan but the name of the DSP to whom the said report under Section 42 of the Act was sent is nowhere mentioned in the list of witnesses. The learned counsel further, while referring to vernacular photocopies of the notice under Section 42 of the Act (Annexure P-2), a copy of '*ruqa*' (Annexure P-3), Consent Memo (Annexure P-4), Recovery Memo (Annexure P-5), Site Plan (Annexure P-6) has submitted that since the handwriting in the various documents prepared at the spot is different, it clearly shows that all these documents have been fabricated. It has further been submitted that since the petitioner has been behind bars for a substantial period of more than 1 year and 10 months, he deserves the concession of bail.
4. The learned State counsel has, however, opposed the petition and has submitted that since it is a case where the petitioner was caught red-handed at the spot while in possession of a 'commercial quantity' of contraband, no

case for grant of bail is made out. The learned State counsel has submitted that in the present case, an intimation in terms of Section 42 of the Act was duly sent by ASI Sahib Singh (Annexure P-2) and that a copy of the same is also annexed with the challan. The learned State counsel has further submitted that since several members were comprised in the police party, the mere fact that the body writing of the documents prepared at the spot are in different hand would be of no consequence and that the case of the prosecution cannot be doubted on the said score. The learned State counsel has informed that the petitioner, as on date, has been behind bars since the last 1 year and 10 months.

5. This Court has considered rival submissions addressed before this Court.
6. The contention of the petitioner as regards non-compliance of Section 42 of the Act cannot be accepted at this stage in view of the fact that a notice in terms of Section 42 of the Act was apparently prepared at the spot and is also annexed with the report under Section 173 Cr.P.C. Needless to mention, it shall always be open to the petitioner to challenge the authenticity of any such document during the course of trial.
7. 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.”

(emphasis supplied)

8. Hon'ble Supreme Court in Md. Nawaz Khan's case (supra) has, thus, categorically held that at the time of grant of bail, the question as regards compliance or non-compliance of Section 42 of the Act is not strictly required to be gone into as the same is a matter, which would be best left to be adjudicated at the time of trial.
9. As far as the contention of the petitioner as regards the fabrication of the documents prepared at the spot is concerned, this Court at this stage is unable to return any such finding to this effect on the basis of the photocopies of the documents which are annexed with the petition. It is not uncommon that when a police party is comprised of several police officials, different documents would be prepared by different police officials in their hand-writing.
10. The present case is a case of recovery of 'commercial quantity' of contraband, which would attract fetters imposed by Section 37 of the Act in the matter of grant of bail. 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.”

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.

13. The trial Court is, however, directed to expedite the conclusion of trial.

5.12.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No