

JOGINDER SINGH

....Petitioner

VS

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Kumar Passi, Advocate for petitioner.

Mr. Vipin Pal Yadav, Addl. Advocate General, Punjab.

AVNEESH JHINGAN, J. (ORAL)

This is a second petition for seeking regular bail in case FIR No.109 dated 24.10.2019 under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and later on added Section 29 of the Act registered at Police Station Zira, District Ferozepur, Punjab. The earlier petition was withdrawn on 06.04.2022 with a liberty to file fresh one with better particulars.

The brief facts are that Police Party received a secret information that Joginder Singh (petitioner) along with Satnam Singh and Ram Nath Narang were bringing intoxicant tablets from Ram Narang and supplying at different places. Acting upon the information on 24.10.2019 the petitioner was apprehended from his house at Zira. 14500 tablets i.e. 11500 tablets mark Clovidol-100 SR and 3000 tablets mark RX Tramadol Hydrochloride which were kept in a black bag were recovered from the house.

The learned counsel for the petitioner submits that the petitioner was a registered Medical Practitioner and was running a clinic but he had sold to Satnam Singh in 2019. He further submits that there is a CCTV footage showing that Satnam Singh brought the bag in question to the house of the petitioner. He

further submits that the FSL report does not contain the entire details of samples as mentioned in the recovery memo. He further argued that there is non compliance of Section 42 of the Act.

Learned State counsel opposes the prayer and submits that the recovery from the house of the petitioner is of commercial quantity. He relies upon Section 37 of the Act. He further submits that story put forth of selling the clinic is a concocted story.

The contentions are being dealt with at insistence of the counsel only for the purpose of deciding the present bail application. The observations made hereinafter shall not be construed as an expression of opinion on the merits of the case.

Recovery from the petitioner is of commercial quantity. It is not disputed that the house belongs to him. There is no registered document to show that the clinic was being run in his house by Satnam Singh.

The contention of the learned counsel for the petitioner that Satnam Singh brought the bag to his house only supports the secret information received by the police party. Section 37 of the Act provides stringent provisions for grant of regular bail in cases where recovery is of commercial quantity.

Section 37 of the Act lays down twin conditions to be fulfilled for grant of bail where recovery is of commercial quantity. Firstly, the court has to *prima facie* satisfy itself on reasonable grounds that the accused is not guilty of the offence and secondly, he is not likely to commit any offence while on bail.

The Supreme Court in Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19 th July, 2022, held as under:

"10. The provisions of Section 37 of the NDPS Act read as follows:

"[37. Offences to be cognizable and non-bailable.-(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In [“Collector of Customs, New Delhi v. Ahmadalieva Nodira ” 5](#), a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

“7. 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 as the present accused-respondent is concerned, are: 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 on 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.*** [emphasis added]

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"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 chargesheet 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."

*The Supreme Court in the judgment passed in **Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, AIR 2021 SC 4476** held as follows :-*

“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)

The issue as to the contentions that there is non-compliance of Section 42 of the Act and FSL report does not contain all the details as provided in the recovery memo would be a subject matter of the trial. No case is made out for grant of bail.

The petition is dismissed.

29th August, 2022
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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>