

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19038 of 2022 (O&M)

DECIDED ON: 24th November, 2022

Sagar

.....PETITIONER

VERSUS

State of Haryana

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Ankur Lal, Advocate for petitioner.

Ms. Geeta Sharma, DAG Haryana.

AVNEESH JHINGAN, J (ORAL)

1. This third petition is filed under Section 439 Cr.P.C. for grant of regular bail in case of FIR No. 286 dated 1.7.2021, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and under Section 18(A), 18(C) of the Drugs and Cosmetic Act, registered at Police Station Dabua, Faridabad.

2. First petition filed was disposed of with liberty to petitioner to approach the Sessions Judge, as the prayer made was for grant of interim bail on ground of filing the challan without FSL report.

3 Thereafter on 22.3.2022 the learned counsel for petitioner after sensing the outcome of petition had withdrawn the second petition

4. The brief facts are that on 1.7.2021, police party received a secret information that Sagar (petitioner) was engaged in selling narcotic substances. Finding the information reliable, a raid was conducted. The petitioner was apprehended and 112 Injections of Buprenorphine Leegesic of 2ml. each (total 224 ml.) and 361 injections of Avil were recovered from him.

5. Learned counsel for the petitioner submits that the petitioner is in custody since 1.7.2021. Trial is not progressing at a decent pace. He relies upon an order dated 7.2.2020 passed in Criminal Appeal No(s). 245/2020 (@ SLP (Crl.) No. 8823/2019) titled as “***Chitta Biswas alias Subhas Versus The State of West Bengal.***”

6. Learned State counsel opposes the prayer by relying upon the provisions of Section 37 of the Act. She submits that the challan was presented on receipt of FSL report and there is no delay in the trial.

7. The Act is a self contained Code. Section 37 of the Act provides twin conditions to be fulfilled for grant of bail in cases involving commercial quantity. The conditions imposed are in addition to conditions provided in criminal code.

8. It would be gainful to cite following decisions of supreme Court.

8.1 The Supreme Court in “***Union of India vs. Shri Shiv Shanker Kesari, 2007 (4) RCR (Criminal) 186***” held as follows :-

“6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and. 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.”

....emphasis supplied

8.2 In ***State of Kerala etc. Versus Rajesh etc. 2020(1) RCR (Criminal) 818***, it was held:

*"20. The scheme of **Section 37** reveals that the exercise of power to grant bail is not only subject to the limitations contained under **Section 439** of the Cr.P.C, but is also subject to the limitation placed by **Section 37** which commences with non-*

obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.'

21. 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. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

...emphasis supplied

8.3 In ***Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19th July, 2022***, it was held:

"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 sub-section (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]

"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

8.4 In ***Union of India (NCB) etc Versus Khalil Uddin etc, 2022 (4) RCR (Criminal) 984*** it was held:

"The High Court by its order which is presently under challenge, directed release of both the accused as stated above on bail after they had undergone custody to the tune of about a year. Questioning grant of relief to said accused, the instant appeals have preferred.

However, going by the circumstances on record, at this stage, on the strength of the statement of Md. Nizam Uddin, though allegedly retracted later, the matter stands on a different footing. In our considered view, in the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail. We, therefore, allow these appeals, set aside the view taken by the High Court and direct that both the appeals be taken in custody forthwith."

...emphasis supplied

9. There is no dispute that as per Schedule appended to the Act, more than 20 ml of Buprenorphine falls under commercial quantity. In the present case 224 ml Buprenorphine Leegesic was recovered from the petitioner.

10. It would not be out of place to mention that there was a specific information that the petitioner was indulging in sale of narcotic substance. On conducting the raid heavy quantity of Buprenorphine was recovered. No doubt, Avil is not covered under the Act but there is not even a prima-facie

explanation put forth by the petitioner for possessing the Buprenorphine

narcotic.

11. It cannot be said at this stage that there is inordinate delay in the trial, as in cases of commercial quantity the statutory time provided for producing the challan is 180 days.

12. No case is made out for this Court to conclude that twin conditions are satisfied. In view of Section 37 of the Act and law laid down by the Supreme Court, custody period in itself cannot be a ground for granting bail when twin conditions of Section 37 of the Act are not fulfilled.

13. The petition is dismissed.

24th November, 2022
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *Yes*