

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

CRM-M-21412-2019.

Date of Decision: 28.02.2022.

Vinod Kumar

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Chanchal K. Singla, Advocate and
Mr. Rohan Sharma, Advocate for petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Lalit Batra, J.

This petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Vinod Kumar** in case FIR No.09 dated 23.01.2019 under Section 22 of NDPS Act, registered at Police Station Sanaur, District Patiala.

Learned counsel for the petitioner *inter alia* contended that the allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urged that alleged recovery of 950 capsules shown at the instance of petitioner is planted one. He further urged that the manner in which alleged recovery of contraband was effected is not forthcoming on the record. He further urged that alleged recovery of contraband is highly doubtful as mandatory provisions of Section 50 of NDPS Act, were not complied with. He further urged that since entire lot of capsules was in loose form and especially the fact that upon these capsules SPM-PRX+WOCKHARDT was written, the chemical composition of said capsules should have been *Dicyclomine 10 mg, Paracetamol 325 mg and*

Tramadol 50 mg. He further urged that in terms of FSL report dated 01.04.2019, the quantity of intoxicant (*Tramadol Hydrochloride*) in the sample capsules was 49.3 mg per capsule against the average weight of each capsule i.e. 599 mg. He further urged that in the FSL report dated 01.04.2019, the other ingredients/composition and salts present in the alleged capsules were not mentioned. He further urged that only the actual quantity of alleged narcotic drugs/psychotropic substances in mixture i.e. 49.3 mg is required to be taken into consideration to ascertain the actual weight of entire contraband. He further urged that since alleged recovery of 950 capsules in loose form was effected, FSL report dated 01.04.2019 pertaining to 10 loose capsules having words “SPM-PRX+WOCKHARDT” printed thereon, cannot be considered as report of analysis qua remainder of 940 loose capsules. He further submitted that petitioner is languishing in custody since 23.01.2019. He further submitted that after presentation of final report as envisaged under Section 173 Cr.P.C. (*Challan*), trial has already commenced. He further urged that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that on 23.01.2019 on the basis of secret information, petitioner was apprehended and from his backpack 950 capsules 'SPM-PRX+WOCKHARDT' were recovered. He further urged that since recovery of contraband (950 intoxicant capsules) was effected from the bag (backpack) being carried by petitioner, said recovery cannot be termed to have been effected during personal search of petitioner, in this scenario, serving of notice as envisaged under Section 50 of NDPS Act, was

not required. He further urged that the entire lot of contraband was taken into possession on the spot and it was kept in a sealed parcel bearing seal having inscription 'KS' and then while making compliance of provisions of Section 57 of NDPS Act, Inspector Gurinder Singh had affixed his seal having inscription 'GS' on the said parcel. He further urged that on 24.01.2019 while making compliance of provisions of Section 52-A of NDPS Act, sealed parcel bearing seals having inscriptions 'KS' and 'GS' was opened in the presence of Judicial Magistrate, then two samples of 10 intoxicated capsules each on which 'SPM-PRX+WOCKHARDT' was printed, were taken out from the entire lot and then all the three parcels were sealed with the seal bearing inscription 'IJS' of the Judicial Magistrate. He further urged that one of the sample parcels containing 10 loose capsules representing the entire lot was sent to FSL for analysis and vide FSL report dated 01.04.2019, average weight of a capsule was found to be 599 mg and on analysis one capsule was found containing *Tramadol Hydrochloride* to the extent of 49.3 mg. He further urged that in case of seizure of mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s), quantity of neutral substance(s) is not to be excluded and to be taken into consideration alongwith actual content by weight of offending drug and to this effect, reliance has been placed on decision of Hon'ble Supreme Court in **Hira Singh and another Vs. Union of India and another**, 2020(2) RCR (Criminal) 523. He further submitted that weight of one capsule is stated to be 599 mg and as such total weight of 950 capsules comes to 569.05 grams, which falls under "commercial quantity" and, thus, in view of bar created by Section 37 of NDPS Act, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Hon'ble Supreme Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In case **Union of India Vs. Ram Samujh and Ors., 1999(9) SCC 429**, it has been elaborated as under:-

*“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v. Chief Secy., Union Territory of Goa (1989(2) RCR(Criminal) 505: (1990) 1 SCC 95)** as under:-*

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects

and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. *To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely, (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in spirit with which Parliament, after due deliberation, has amended.”*

Hon'ble Supreme Court in case **State of Kerala Etc. Versus Rajesh Etc., 2020(1) R.C.R. (Criminal) 818** while dealing with provisions of Section 37 of NDPS Act, has laid down as under:-

“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 in 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.”

Without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that alleged recovery of contraband (**Tramadol Hydrochloride**) from the petitioner falls under “commercial quantity” and the fact that allegations against the petitioner are serious in nature, thus, in view of rigours of Section 37 of NDPS Act, he does not deserve the concession of bail.

As a sequel to above, instant petition for grant of regular bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

28.02.2022
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No