

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

205

CRM-M-27120-2021.

Date of Decision: 05.05.2022.

Rajinder Kumar @ Raja

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Navraj Singh, Advocate for petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

Lalit Batra, J.

This second petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Rajinder Kumar @ Raja** in case FIR No.41 dated 13.04.2019 under Section 22 of NDPS Act, registered at Police Station Nakodar Sadar, District Jalandhar Rural.

Custody certificate dated 04.05.2022 filed by respondent-State, is taken on record.

In compliance of order dated 04.04.2022, status report dated 26.04.2022 has been received from Trial Court.

Status report dated 05.05.2022 by way of affidavit of Lakhwinder Singh Mal, PPS, Deputy Superintendent of Police, Sub Division Nakodar, District Jalandhar (Rural), alongwith Annexures (R-1 and R-2) filed today in the Court by respondent-State, is taken on record and the copy thereof has been supplied to learned counsel for the petitioner.

Learned counsel for the petitioner *inter alia* contends that allegations levelled against the petitioner are altogether false and frivolous and there is no iota of truth therein. He further urges that alleged recovery of contraband (90 strips of Becalm 0.5 Alprazolam, each strip containing 15 tablets i.e. 1350 intoxicant tablets) shown to be effected at the instance of petitioner, is planted one. He further urges that no sample was drawn from the intoxicant tablets and even batch number, name of manufacturer and other details of all the strips were not mentioned and, thus report received from FSL cannot be said to be based on representative samples of entire quantity, therefore, rigours of provisions of Section 37(1)(b) of NDPS Act, cannot be attracted against the petitioner. He further urges that even otherwise mandatory provisions of NDPS Act, were not complied with, as no public witness was joined by the Investigating Agency at the time of alleged recovery. He further urges that alleged recovery was effected on 13.04.2019, whereas sample parcel was sent to FSL on 16.04.2019 and as such there was delay in sending the sample parcel for chemical analysis. He further submits that petitioner is not involved in any other case under the NDPS Act. He further submits that petitioner is languishing in custody since 13.04.2019. He further submits that after presentation of final report as envisaged under Section 173 Cr.P.C. (*Challan*), trial has already commenced. He further urges 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 13.04.2019 petitioner was apprehended while having conscious possession of 1350 intoxicant tablets

make BECALM 0.5 (Alprazolam). He further submits that though efforts were made to join public witness but to no avail. He further submits that two sample parcels were taken out from the entire lot and after making compliance of provisions of Section 52-A of NDPS Act, sample parcel containing 15 tablets was sent to FSL for chemical analysis. He further submits that vide FSL report dated 02.07.2019 (Annexure R-1), above said contraband was found containing "Alprazolam" and average weight of one tablet was found to be 99 mg and as such the actual quantity of the contraband comes to 133.650 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. He further submits that after completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) has already been presented in Court and trial has commenced. He further submits that out of total ten (10) prosecution witnesses, four (04) witnesses have already been examined. He further urges that earnest and sincere efforts shall be made at the instance of Prosecuting Agency to conclude the prosecution evidence at the earliest.

I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as status report furnished at the instance of respondent-State.

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.”

Allegedly, petitioner was apprehended while having conscious possession of 1350 intoxicant tablets. Vide FSL report dated 02.07.2019 (Annexure R-1), above said contraband was found containing “Alprazolam” and the actual quantity of the contraband comes to 133.650 grams.

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 (**Alprazolam**) 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 provisions 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 petitioner, being devoid of merits, is dismissed. It is pertinent to mention here that as petitioner is languishing in custody for the last more than quarter to three years, the fact that though number of prosecution witnesses have already been recorded by Trial Court, speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution of India, in this scenario, Trial Court is directed to make earnest and sincere efforts to examine the remainder of prosecution witnesses expeditiously and to conclude the trial at the earliest while giving short adjournments.

(LALIT BATRA)
JUDGE

05.05.2022

VP/jitender

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