

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

CRM-M-27673-2022 (O&M)
Date of Decision:- 21.11.2022

Santokh @ Sonu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr Gourav Jain, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.
assisted by PSI Ashok.

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 419 dated 4.9.2021 under Section 22 (c), 27(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Tohana, District Fatehabad.
2. As per the case of prosecution, on 4.9.2021 when a police party headed by SI Sumer Singh was present near Police Station Tohana in connection with patrolling and to check drug trafficking, then a young man was noticed standing on a red coloured scooty who upon seeing the police party, tried to flee from the spot on his scooty. However, the police party apprehended the said person on the basis of suspicion. Upon enquiry, he disclosed his name as Santokh @ Sonu. Upon checking scooty (Activa bearing Registration No. HR-23H-8131), a white coloured plastic bag was found lying in the front part of scooty. Notice in terms of Section 50 of the NDPS Act was

served upon the accused, who opted to be searched in the presence of a gazetted officer. Accordingly, SI Sumer Singh telephonically requested Shri Mukesh Chander, Block Education Officer, Tohana to come at the spot and who reached there after about 20-25 minutes. Search was conducted in the presence of the said gazetted officer and the white coloured plastic bag was found to contain 4970 tablets of 'Tramadol' total weighing 2485 grams and 10 bottles (100 ml each) containing Chlorpheniramine Maleate and Codeine Phosphate Syrup total weighing 1340 grams.

3. The learned counsel for the petitioner submitted that the petitioner has falsely been implicated in the present case and that as a matter of fact he had been picked up by the police much prior to the alleged occurrence. The learned counsel, while drawing the attention of this Court to the copy of FIR has submitted that though the occurrence is stated to have taken place at about 7:30 p.m., the photographs (Annexure P-3) printed from the CCTV footage show that it was in the afternoon at about 2:33 p.m. that the petitioner was apprehended by the police from a place near grain market. The learned counsel has further submitted that the falsity of the case would be evident from the fact that when the statement (Annexure P-5) of Inspector Surinder Kumar, Officer Incharge, Police Station, Tohana was recorded under Section 161 Cr.P.C., he referred to the recovered contraband as '*heroin*'.
4. Opposing the petition, the learned State counsel has submitted that it is a case where the petitioner was caught red handed while in possession of huge quantity of two types of contraband falling in the category of 'commercial quantity' and since the recovery was effected in the presence of a gazetted officer of a department other than the police department, the factum of

recovery cannot be doubted. The learned State counsel has further submitted that no sanctity can be attached to the alleged CCTV footage in the absence of any certification as regards its authenticity. The learned counsel has further pointed out that call details record was also collected during the course of investigation which fully substantiates the case of prosecution and since the petitioner is a habitual offender having been involved in 13 other cases, including cases under the NDPS Act, he does not deserve the concession of bail.

5. This Court has considered rival submissions addressed before this Court.
6. It is a case of recovery of two types of contrabands i.e. 'Tramadol' and 'Codeine' which fall in the category of 'commercial quantity'. Although, the recovery has been effected from a bag and as such, Section 50 of the NDPS Act would not have been attracted in the present case but the Investigating Officer, however, chose to extend the offer in terms of Section 50 of the NDPS Act and consequently a gazetted officer i.e. Shri Mukesh Chander, Block Education Officer, Tohana was called and in whose presence the recovery was effected. The recovery, having been effected in the presence of a gazetted officer of a different department, the same would carry certain sanctity. The photographs upon which the petitioner is relying do not advance the case of the petitioner in any manner, particularly when the authenticity of the CCTV footage is still in question. The petitioner otherwise has a chequered history, having been involved in 13 other cases out of which he stands acquitted in five and two cases under NDPS Act are still pending.

7. Since it is a case of recovery of ‘commercial quantity’ of contraband, the fetters imposed under Section 37 of the NDPS Act will come into play in the matter of grant of bail.
8. 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.
9. 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.”

10. There is nothing on record to suggest that the petitioner has been falsely implicated or that in case released on bail, he will not commit identical offences again. As such, no case for grant of regular bail is made.
11. The petition is sans merit and is hereby dismissed.

21.11.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No