

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

CRM-M-38729-2022 (O&M)

Date of Decision: 2nd September, 2022

Buta Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. K.P. Singh, Advocate for the petitioner.
Ms. Geeta Sharma, Deputy Advocate General, Haryana.

AVNEESH JHINGAN , J.(Oral)

This fourth petition under Section 439 of Criminal Procedure Code (Cr.P.C.) is filed seeking regular bail in FIR No. 344 dated 22.10.2020 under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') registered at P.S. Ellenabad, District Sirsa.

Earlier three petitions were dismissed as withdrawn with liberty to revive the prayer at later stage.

The facts in narrow compass are that during routine checking on 22.10.2020, a police party signalled a Honda Accord Car bearing registration No. DL-3CAK-4222. The occupants of the vehicle tried to flee but on being chased by police, petitioner was apprehended. However, two co-accused managed to escape. 70 kilogram of Doda-post was recovered. On interrogation the petitioner disclosed that Malkiat Singh and Ladi fled away from the car at time of checking.

Learned counsel for the petitioner submits that the petitioner is

in custody since 22.10.2020. The recovery is of 70 kgs of Doda-post i.e. marginal higher than the commercial quantity. The contention is that there is non-compliance of Section 50 of the Act. The samples were sent to FSL after delay of four days and the co-accused was granted bail by this Court.

Learned State Counsel opposes the prayer for grant of bail and submits that the petitioner is involved in two more cases under the Act. The recovery is of commercial quantity. She relies upon Section 37 of the Act to oppose the bail.

Section 37 provides stringent provisions for granting bail in case where recovery is of a commercial quantity. The twin conditions mentioned in the Section 37 of the Act. These conditions are in addition to limitation provided under Cr.P.C.

The Supreme Court in Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19th 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. Ahmadaliev 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."

It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

No case is made out before this Court to *prima facie* conclude on reasonable ground that the petitioner is not guilty of offence under the Act. The fact that the petitioner is involved in two more cases under the Act leaves the Court with no basis to *prima facie* satisfy itself that the petitioner is not likely to commit any offence, if granted bail. In the Schedule to the Act, more than 50 kgs of Poppy Husk is commercial. In a case in hand, 70 kgs Doda-post was recovered i.e. 40% above the limit prescribed for commercial quantity. It cannot be said to be marginally high.

There was a chance recovery and the contraband was recovered from the car. Section 50 of the Act will not apply in such cases. In any case, the applicability of Section 50 of the Act would be a subject matter of the trial. As held by the Supreme Court in *Narcotics Control Bureau Versus Mohit Aggarwal's case (supra)*, in cases involving recovery of commercial quantity, custody period cannot be sole ground for grant of bail.

No case is made out for grant of bail.

The petition is dismissed.

Since the main case has been dismissed, the pending application, if any, is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

2nd September, 2022

anuradha

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No