

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

CRM-M-39069-2022 (O&M)
Date of Decision:- 21.11.2022

Rakesh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. R.K. Bamal, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.
assisted by ASI Suresh Kumar

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 265 dated 5.8.2020 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Jind Sadar, District Jind
2. The FIR was lodged pursuant to receipt of secret information received by ASI Parveen Kumar who was present at Bus Stand, Ghimana alongwith other police officials on 5.8.2020 for the purpose of patrolling. The information was to the effect that Rakesh (petitioner) is involved in selling 'charas' and that even on the given day, he was bringing huge quantity of 'charas' in his white coloured RITZ car bearing Registration No. HR20-AP-2443 and would be proceeding to village Baans Khurd from the side of Jind. Upon receipt of the aforesaid tip, ASI Parveen Kumar passed on the said information in terms of Section 42 of the NDPS Act to the police Station, Jind for recording of DDR and also sent in a request to the office of Deputy

Commissioner for nominating some Magistrate. Barricading was held. When a car bearing Registration No. HR20-AP-2443 was seen proceeding, the same was signalled to stop. Upon inquiry, the driver disclosed his name as Rakesh. He was served with a notice under Section 50 of the NDPS Act and who opted to be searched in the presence of a gazetted officer. A request was again sent to the Deputy Commissioner office, pursuant to which Shri Raj Kapur Sura, Secretary Red Cross Jind reached at the spot who introduced himself to the accused. The search of the car led to recovery of a black coloured polythene bag lying under the driver's seat and upon checking it was found to contain '*charas*'. Upon weighment, it was found to weigh 1.500 kilograms.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and infact it is a case where the Investigating Officer i.e. ASI Parveen Kumar himself is a tainted officer against whom FIR under the NDPS and the P.C. Act cases has been lodged. It has been submitted that in these circumstances no sanctity can be attached to the factum of recovery allegedly effected from the petitioner.
4. The learned counsel for the petitioner has further submitted that in the present case, the petitioner is infact handicapped to the extent of 50% and is not in a position to drive a manual car. The learned counsel has drawn the attention of this Court to Disability Certificate (Annexure P-13) wherein it has been certified that the petitioner is permanently disabled to the extent of 55% in relation to his left limb.
5. Opposing the petition, the learned State counsel has submitted that it is a case of recovery of 1.500 kilograms of '*charas*' which would fall in the

category of 'commercial quantity'. The learned State counsel has submitted that while it is correct that ASI Parveen Kumar is himself involved in case registered under the NDPS Act and the P.C. Act but the second Investigating Officer i.e. SI Rajinder Singh, who was also present at the spot has a clean record. The learned State counsel has submitted that since the recovery in any case was effected in the presence of a gazetted officer from the office of Deputy Commissioner, the same would carry sanctity, particularly in the absence of any circumstance to doubt the case of the prosecution. The learned State counsel has also informed that during the course of investigation statement of Satish Kumar, owner of the car in question, had been recorded who stated that the petitioner had borrowed his car and which corroborates that the petitioner was possessing the vehicle in question.

6. This Court has considered rival submissions addressed before this Court.
7. In the present case, though the compliance of Section 50 of the NDPS Act was not strictly required as the recovery was effected from the car but in any case since a gazetted officer from the office of the Deputy Commissioner had been called at the spot, it cannot be said that the petitioner has been falsely implicated by a tainted police official. The second investigating Officer S.I. Rajinder Singh, who was also associated enjoys a clean record. Apart from ASI Parveen, there were other police officials also who were present at the spot and as such, there is nothing on record at this stage to doubt the factum of recovery i.e. 1.500 kilograms of '*charas*' which falls in the category of 'commercial quantity' Though, it does appear that the petitioner has some kind of physical handicap but there is nothing to suggest that he is unable to drive a car so as to rule out the possibility of involvement of the petitioner.

8. 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.
9. 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.
10. 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.”

11. 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.
12. 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