

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

201

CRM-M-54355-2021.

Date of Decision: 08.07.2022.

Rohit Jain @ Mani

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Jashandeep Singh Sandhu, Advocate for petitioner.

Mr. Deepak Bhardwaj, Deputy Advocate General, Haryana.

Lalit Batra, J.

This second petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Rohit Jain @ Mani** in case FIR No.19 dated 17.01.2020 under Section 22 of NDPS Act (Section 29 of NDPS Act added lateron), registered at Police Station City Mandi Dabwali, District Sirsa.

Custody certificate dated 08.07.2022 filed by respondent-State, is taken on record.

Reply dated 16.06.2022 by way of affidavit of Kuldeep Singh Beniwal, Deputy Superintendent of Police, Dabwali, District Sirsa, alongwith Annexures (R-1 and R-2) already filed on behalf of 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 (4000 intoxicant tablets Clovidol-100 SR) shown to be effected at the instance of petitioner, is planted one. He further urges that even otherwise mandatory provisions of Sections 42, 50 and 52 of NDPS Act, were not complied with by the Investigating Agency. He further urges that no public witness was joined by the Investigating Officer at the time of alleged recovery. He further submits that petitioner is not involved in any other case except instant one under the provisions of NDPS Act. He further urges that petitioner is suffering from Hepatitis-C and being HIV positive, his health is deteriorating day by day as he is not getting proper treatment in the jail. He further submits that petitioner is languishing in custody since 17.01.2020. He further submits that after presentation of final report as envisaged under Section 173 Cr.P.C. (*Challan*), though trial has already commenced but not even a single prosecution witness has been examined till date. 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 17.01.2020 after having received secret information that petitioner is indulging in the sale of intoxicant tablets, compliance in terms of provisions of Section 42 of the NDPS Act was made and the authorities concerned were informed accordingly. He further urges that raid was carried out at the house of petitioner and having suspicion that he was having conscious possession of contraband, he was apprehended and notice under Section 50 of the NDPS Act was served upon him and then search on his person as well as of the bag kept by him was

conducted in the presence of Gazetted Officer. He further urges that though passersby were asked to join the proceedings but they had shown their inability. He further urges that from the bag being carried by petitioner, eight (08) boxes containing 4000 intoxicant tablets make Clovidol-100 SR were recovered and thereafter case property was kept in a sealed parcel. He further submits that necessary compliance under the provisions of Sections 55 and 57 of the NDPS Act was made. He further urges that in compliance of provisions of Section 52-A of NDPS Act, case property was produced before Judicial Magistrate Ist Class, Dabwali, and then samples were taken out in his presence and thereafter sample parcel containing ten tablets was sealed and it was sent to FSL, Madhuban, for chemical analysis. He further urges that on interrogation, petitioner disclosed that he had purchased the said contraband from co-accused Harjit Singh from Rajasthan, who was also arrested in this case on 24.02.2020 and suffered disclosure statement to the effect that he (co-accused Harjit Singh) had purchased intoxicant tablets from Het Ram, resident of village Bhaap (Rajasthan) at the rate of Rs.600/- per box and further sold the said contraband at the rate of Rs.1000/- per box to the petitioner. He further submits that vide FSL report dated 13.03.2020 (Annexure R-1), above said contraband was found containing "Tramadol Hydrochloride" and average weight of one tablet was found to be 0.403 gram and as such the actual quantity of the contraband comes to 1 kilogram-612 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 Medical Officer, District Jail, Sirsa, vide his report Annexure R-2, has reported that though petitioner is affected with HIV but all the requisite medicines as well as special diet for

treatment of said ailment are being provided to him on regular basis and his general condition is stable. 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 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 reply filed 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 4000 intoxicant tablets make Clovidol-100 SR. Vide FSL report dated 13.03.2020 (Annexure R-1), above said contraband was found containing “Tramadol Hydrochloride” and the actual quantity of the contraband comes to 1 Kilogram-612 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 (**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 provisions of Section 37 of NDPS Act, he does not deserve the concession of bail. It is pertinent to mention here that as petitioner is affected with HIV, for treatment of said ailment, apart from special diet, requisite medicines are being provided to him on regular basis and his general condition is stable, as is evident from medical report (Annexure R-2).

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 about 2½ years, the fact that 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 prosecution witnesses expeditiously and to conclude the trial at the earliest while giving short adjournments.

(LALIT BATRA)
JUDGE

08.07.2022

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