

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

CRM-M-52477-2022 (O&M)
Date of Decision: 14.12.2022

GURTEJ SINGH

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Karan Garg, Advocate
for the petitioner.

Mr. Ram Kumar Singla, D.A.G., Haryana.

HARSH BUNGER, J.

Petitioner has filed this petition under Section 438 Cr.P.C. seeking grant of anticipatory bail in case FIR No. 306 dated 20.10.2022, registered under Sections 15, 29, 27-A of the Narcotic Drugs and Psychotropic Act, 1985 (here-in-after referred to as 'the NDPS Act') at Police Station Sadar, Ratia, District Fatehabad.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the FIR in question and he has not committed any offence. It is submitted that the petitioner was not named in the FIR and the recovery has been effected from co-accused, namely, Satnam Singh son of Harnek Singh son of Mastana Singh and the petitioner has been implicated on the basis of disclosure statement of said co-accused Satnam Singh. It is contended that the statement of co-accused before the

police implicating the petitioner is not admissible in evidence and thus, concession of anticipatory bail should be granted.

Mr. Ram Kumar Singla, Deputy Advocate General, Haryana, to whom an advance copy of paper book stands served, appears on behalf of the respondent/State and has submitted a status report by way of affidavit of Sh. Ajaib Singh, HPS, Deputy Superintendent of Police, Fatehabad on behalf of State of Haryana; which is taken on record subject to all just exceptions.

Learned State counsel has opposed the present petition for grant of anticipatory bail on the ground that as per the case of the prosecution, Satnam Singh son of Harnek Singh was apprehended and recovery of 4 Kg – 750 grams of poppy straw had been effected from him. It is submitted that in the disclosure statement of the co-accused Satnam Singh son of Harnek Singh, he has named the present petitioner. It is submitted that the petitioner is a habitual offender as he was/is involved in seven other cases under the NDPS Act, out of which he was convicted in atleast four cases. It is submitted that the instant case FIR has been registered under Sections 15, 29, 27-A of the NDPS Act and the rigors of Section 37 are attracted to this case. It is submitted that the offence is serious in nature and the petitioner is not entitled to the concession of anticipatory bail.

I have heard learned counsel for the parties and perused the paperbook with their able assistance.

The petitioner was named by one Satnam Singh son of Harnek Singh, who was apprehended and recovery of 4 Kg – 750 grams of poppy straw had been effected from him. The disclosure statement of Satnam Singh

reads as under :-

“In the presence of following witnesses, accused Satnam Singh son of Harnek Singh resident of Kalotha in police custody without any fear, force, allurement voluntarily got recorded his disclosure statement that “I am resident of above-mentioned address and does work of labourer and addict of doing intoxication therefore I use to sell poppy husk. Gurtej Singh son of Leela Ram alias Bhola resident of ward no.8 Ramdasiya Mohalla is my friend. On 17.10.2022 Gurtej Singh son of Leela Ram alias Bhola resident of ward no.8 Ramdasiya Mohalla Ratia supplied 7 kilograms poppy husk to me outside my home at rate of Rs.3,200/- per kilogram, out of which some poppy husk was consumed by me and some was sold to unknown person of Punjab. Now police apprehended me with 4 kilograms 750 grams with which police apprehended me. I can demarcate that place where I purchased 7 kilograms poppy husk from Gurtej Singh son of Leela Ram alias Bhola resident of ward no.8 Ramdasiya Mohalla at rate of Rs.3200/- per kilograms outside my house and I knew about the hideouts of Gurtej Singh son of Leela Ram and get him apprehended. Disclosure statement of accused was recorded on which accused and witnesses put their signatures.”

Apart from the above extracted disclosure statement, another important aspect to be seen in this case is the past criminal records of the petitioner. In Status Report, it has been stated as under:-

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b. That on 20.10.2022, during the course of investigation, co-accused Satnam Singh got recorded his disclosure statement wherein disclosed that he does the work as labourer and he is drug addict and due to that reason, he uses to sell poppy husk. Co-accused Satnam Singh further disclosed that he is friend of the present petitioner and on

17.10.2022, petitioner supplied 7 kilograms poppy husk to him (co-accused Satnam Singh) at rate of Rs.3200/- per kilogram. Co-accused Satnam Singh further disclosed that out of 7 kilograms, he consumed some poppy husk and some poppy husk was sold to addicts of Punjab region and police apprehended him with 4 kilograms 750 grams poppy husk. True translated copy of disclosure statement of co-accused Satnam Singh is annexed as Annexure R-1 for the kind perusal of this Hon'ble Court. In pursuance of the disclosure statement (Annexure R-1), co-accused Satnam Singh demarcated the place from where he (co-accused Satnam Singh) purchased 7 kilograms poppy husk from petitioner.

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10. That as per record, the present petitioner has remained involved in 7 other cases under NDPS Act, 1985 among which petitioner has been convicted in 4 cases and acquitted in 2 cases and facing trial in 1 case whose details are given below :-

Under trial case:

- a. F.I.R. No.216 dated 05.08.2019 under Section 15, 27-A NDPS Act registered at Police Station City Ratia. In that case, warrant of arrest of petitioner has been issued for 07.02.2023. True copy of order dated 07.10.2022 is annexed as Annexure R-2 for the kind perusal of this Hon'ble Court.

Convicted cases:

- b. F.I.R. No.165 dated 19.12.2010 under section 15 NDPS Act registered at Police Station Moonak (Punjab). In that case, on 16.08.2012, petitioner has been convicted and sentenced for 10 years imprisonment and fine of Rs.1,00,000/-.
- c. F.I.R. No.33 dated 07.03.2010 under Section 15 NDPS Act registered at Police Station Lehra (Punjab). In that case, on 11.12.2012, petitioner has been

convicted and sentenced for 01 year imprisonment and fine of Rs.2,000/-.

d. F.I.R. No.333 dated 14.06.2006 under Section 15 NDPS Act registered at Police Station Ratia, District Fatehabad (Haryana). In that case, petitioner has been convicted and sentenced undergone (14 days) and fine of Rs.5,000/-.

e. F.I.R. No.125 dated 16.03.2001 under Section 15 NDPS Act registered at Police Station Ratia, District Fatehabad (Haryana). In that case, on 18.03.2005, petitioner has been convicted and sentenced for 3 years imprisonment and fine of Rs.10,000/-.

Acquitted cases :

f. F.I.R. No.153 dated 02.12.2008 under Section 15 NDPS Act registered at Police Station Budhlada (Punjab). In that case, petitioner has been acquitted on 10.03.2017.

g. F.I.R. No.385 dated 26.12.2003 under Section 15 NDPS Act registered at Police Station SadarSirsa (Haryana). In that case, petitioner has been acquitted on 01.07.2009.

11. That in the present case, the present petitioner has supplied 7 kilograms poppy husk to co-accused Satnam Singh. The present petitioner is drug peddler who has remained involved in 7 other cases under NDPS Act, 1985 among which already stand convicted in 4 cases.

12. That considering the criminal antecedents of petitioner, petitioner is not entitled for concession of anticipatory bail. There is every likelihood that after being released on bail, petitioner may remain indulge in the criminal activities of drug peddling.”

A perusal of the status report would show that the petitioner is involved in seven other cases under NDPS Act, out of which, he was convicted in atleast four cases. This *prima facie* points towards his

involvement in drugs. Moreover, the instant case FIR has been registered under Sections 15, 29, 27-A of the NDPS Act and the rigors of Section 37 are attracted.

Hon'ble the Apex Court in ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, 2021(10) SCC 100*** has held as under:

*"16. With regard to the grant of bail for offences under the NDPS Act, in **Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798** this Court observed that bail may be cancelled if it has been granted without adhering to the parameters under Section 37 of the NDPS Act. Further, in **Union of India v. PrateekShukla, (2021) 5 SCC 430**, one of us (Justice DY Chandrachud), speaking for a two-judge Bench, noted that non-application of mind to the rival submissions and the seriousness of the allegations involving an offence under the NDPS Act by the High Court are grounds for cancellation of bail.*

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18. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are:

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

19. The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-judge Bench of this Court in Shiv Shanker Kesari (supra), held that:

"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means

something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

"7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."

(See Municipal Corpn. of Delhi v. JaganNath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532]

[...]

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315]

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are

reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

(emphasis supplied)

20. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed..."

In *Jai Prakash Singh Versus State of Bihar and another etc.*,

2012(2) RCR(Criminal) 251, Hon'ble the Apex Court observed that neither anticipatory bail nor regular bail can be granted as a matter of rule and the anticipatory bail being an extraordinary privilege should be granted only in exceptional cases.

In case of *State represented by the C.B.I. Versus Anil Sharma*,

1997(4) R.C.R.(Criminal) 268, Hon'ble the Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

Keeping in view the above facts and circumstances, in my considered view, the petitioner in the present case is not entitled for grant of

anticipatory bail for the following reasons:-

(i) that the petitioner was named by Satnam Singh son of Harnek Singh, who was apprehended and recovery of 4 Kg – 750 grams of poppy straw had been effected from him.

(ii) that no strong prima facie case has been made out by the petitioner to show mala fide on behalf of either the police or the co-accused Satnam Singh who have named the present petitioner.

(iii) that a perusal of the status report would show that the petitioner is involved in seven other cases under NDPS Act and was also convicted in at least four cases out of said seven cases.

(iv) that in this case, custodial interrogation of the petitioner is very much necessary for complete and effective investigation and if the same is denied to the investigating agency, that would leave many loose ends, gaps and lacuna in the investigation, thus adversely affecting the case.

(v) that the instant case FIR has been registered under Sections 15, 29, 27-A of the NDPS Act and thus, the bar under Section 37 of NDPS Act, would apply to the present case.

(vi) that there is nothing on record so as record satisfaction qua the twin conditions contained under Section [37\(1\)\(b\)](#) of the NDPS Act.

Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No. 306 dated 20.10.2022, registered under Sections 15, 29, 27-A of the Narcotic Drugs and Psychotropic Act, 1985; is accordingly dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose

of adjudicating the present bail petition.

Pending application/s, if any, shall also stand disposed of.

December 14, 2022
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No