

213 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-5249-2023

Date of Decision: 24.07.2023

Paramjit Singh @ Pamma

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. N.S. Sodhi, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, AAG, Punjab.

HARSH BUNGER J.

1. Petitioner (Paramjit Singh @ Pamma) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.234 dated 16.09.2022, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Guruharsahai, District Ferozepur.

2. Upon issuance of notice, status report by way of affidavit dated 25.02.2023 of Mr. Yadwinder Singh, P.P.S., Deputy Superintendent of Police, Sub Division Guruharsahai has been filed on behalf of State of Punjab, which is already on record.

3. Custody certificate dated 17.05.2023 of the petitioner is taken on record, subject to all just exceptions.

4. Briefly, the aforesaid case FIR has been registered on the basis of *ruqa* sent by Sub Inspector Kulwant Singh, C.I.A. Staff, wherein it was stated that on 15.09.2022, he, along with other fellow employees, was going

from Ferozepur to Police Station Lakhoke Bheram, Police Station Guruharsahai area on Government vehicle bearing registration No.PB-112-F-6702 for patrolling and checking of suspected persons and when the police party reached near the main gate of Government High School, Village Mohan Ke Hithar, Police Station Guruharsahai on Ferozepur-Fazilka Road, a secret information was received that Paramjit Singh @ Pamma (petitioner) and Gurpreet Singh @ Gora, who are jointly in the profession of selling *heroin*, on that day, were coming from Village Bulla Rai Uttar to Mohan Ke Hithar on a motorcycle (Hero HF Deluxe, black colour), without any registration number, to sell huge quantity of *heroin* and in case, picket is laid on the Link Road Village Bulla Rai Uttar then they can be apprehended with huge quantity of *heroin*. Finding the said information to be true and reliable, *ruqa* was prepared and the same was sent for registration of FIR. As per the status report, pickets were laid on the Link Road, Village Bulla Rai Uttar and after some time, two persons were seen coming on motorcycle from Village Bulla Rai Uttar side, whereupon torch light was shown by Sub Inspector Kulwant Singh and on seeing the pickets, the said persons tried to turn the motorcycle and run away but they slipped and were apprehended by the police. Upon inquiry about their whereabouts, the person riding the motorcycle disclosed his name as Gurpreet Singh @ Gora and the pillion rider told his name as Paramjit Singh @ Pamma (petitioner). Thereafter, Sub Inspector Kulwant Singh, after following the due procedure, gave them notice that there was an apprehension of their being carrying some intoxicant substance and their search was required to be conducted; and they were made aware of their legal rights that they can get their search conducted in the presence of Magistrate or Gazetted Officer, to which they replied that

they wanted their search to be conducted in the presence of a Gazetted Officer, whereupon the Deputy Superintendent of Police, Police Sub Division Guruharsahai was called at the spot, who also informed the aforesaid persons that they can get their search conducted by Magistrate or some other Gazetted Officer, however, both the persons gave their consent that they want to get their personal search and of the motorcycle conducted by the aforesaid Deputy Superintendent of Police. Accordingly, the consent memos were prepared and the search was carried out. Upon personal search of Paramjit Singh @ Pamma (petitioner), a heavy transparent polythene was recovered from the right pocket of his lower and on opening the same, *heroin* was found inside it, which on weighing, was found to be 260 grams, including the weight of polythene. Thereafter, upon personal search of Gurpreet Singh @ Gora, a heavy transparent polythene was recovered from the right pocket of his lower and on opening the same, *heroin* was found inside it, which on weighing was found to be 10 grams, including the weight of polythene.

5. As per the status report, Gurpreet Singh @ Gora had suffered a disclosure statement on 19.09.2022 wherein he stated that the *heroin* recovered from him was bought from one Harbans Singh and accordingly said Harbans Singh was also nominated as an accused in the instant case and Section 29 of the Narcotic Drugs and Psychotropic Substances Act was added vide DDR No.5 dated 19.09.2022. It is further mentioned in the status report that the Forensic Science Laboratory Report dated 12.10.2022 has been received, wherein it is mentioned as under:-

“The contents of parcels 1 and 2 under reference have been analyzed separately by chemical, T.L..C and instrumental

analysis. On the basis of the analysis, 29.22% and 35.86% Diacetylmorphine (Heroin) has been found present in the contents of the parcels 1 and 2 respectively...”

6. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case due to a minor altercation that took place amongst the police officials and the petitioner and Gurpreet Singh @ Gora. It is submitted that the alleged recovery from the petitioner has been manipulated by the police and no independent witness was joined at the time of said recovery.

7. Learned counsel for the petitioner has relied upon judgment dated 22.02.2021 passed by a co-ordinate Bench of this Court in CRM-M-7407-2021 to contend that the alleged recovery of 260 grams of *heroin* effected from the petitioner in the instant case is marginally above the commercial quantity, hence the petitioner is entitled to bail as in the aforesaid referred case as well, the recovery of 260 grams of *heroin* was effected and bail was granted to the petitioner therein. Further, reliance has been placed upon judgment dated 18.08.2021 passed by a co-ordinate Bench of this Court in CRM-M-22407-2021, whereby bail was granted to the petitioner therein, from whom recovery of 260 grams of *heroin* was effected. Another reliance has been placed upon judgment dated 20.11.2019 passed by this Court in CRM-M-48462-2019, wherein the petitioner was granted regular bail in the case, where 270 grams of intoxicant powder was recovered.

8. Learned counsel for the petitioner submits that the petitioner is in custody since 16.09.2022; investigation in the case is complete and challan stands presented, thus trial in the case is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period. Learned counsel for the petitioner submits

that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

9. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that 260 grams of *heroin* was recovered from the petitioner, which falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act are attracted in this case. As regards the submission of learned counsel for the petitioner that recovery has been manipulated by the police, learned State counsel has referred to paragraph No.12 of the status report, wherein it is stated that every document attached with the police file in case FIR No.234 dated 16.09.2022, i.e. the Recovery Memo, Form No.29-M, Compliance of Section 52 of the Narcotic Drugs and Psychotropic Substances Act before the learned Magistrate and all the other documents, reflects the quantity of recovered *heroin* to be 260 grams from Paramjit Singh @ Pamma (petitioner). Learned State counsel submits that the petitioner does not have clear antecedents as he is also involved in two more cases (FIR No.66 dated 01.06.2020 and FIR No.63 dated 26.05.2020) under the Narcotic Drugs and Psychotropic Substances Act, however, it is fairly stated that he is on bail in both of those cases. Learned State counsel submits that in case the petitioner is released on bail then he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the present petition has been made.

10. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in *Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382* to contend that the facts and

circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced herein below :-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

11. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

12. In the instant case, the alleged recovery effected from the petitioner is of 260 grams of *heroin* which falls under the category of 'commercial quantity' and thus rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act are attracted in this case. Section 37 *ibid* reads as under:-

S.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 sub-section (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.”

13. The Apex Court in **“Union of India vs. Rattan Mallik @ Habul”, 2009 (1) R.C.R. (Criminal) 938**, had observed that when an accused is arrested in a case under Narcotic Drugs and Psychotropic Substances Act, grant of bail to such accused is not only subject to limitations imposed under Section 439 of the Criminal Procedure Code, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act and the accused will be granted bail only if the Court is satisfied that there is reasonable ground for believing that accused was not guilty of offence and he was not likely to commit an offence under Narcotic Drugs and Psychotropic Substances Act while on bail. In that way, bail could be granted, if mandatory provisions of Section 37 of Narcotic Drugs and Psychotropic Substances Act are satisfied.

14. In **“State of Kerala etc. vs. Rajesh etc.”, 2020(1) R.C.R. (Criminal) 818**, Hon'ble the Apex Court had observed as under:

*19. This 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 **Union of India v. Ram Samujh and Ors. 1999(4) RCR (Criminal) 93 : 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 the spirit with which Parliament, after due deliberation, has amended."

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 CrPC, 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.

15. In the instant case, there is nothing on record to enable this Court to record *prima facie* satisfaction for believing that petitioner is not guilty of the offence or that he will not commit any offence while on bail, especially when the petitioner is stated to be involved in two more cases under the Narcotic Drugs and Psychotropic Substances Act, i.e. FIR No.66 dated 01.06.2020, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station S.T.F., Phase-4, Mohali and FIR No.63 dated 26.05.2020, under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station S.T.F., Phase-4, Mohali. Although, the investigation in the case is complete and even charges have been framed, however, material witnesses are yet to be examined.

16. As regards the argument of learned counsel for the petitioner that the weight of contraband with polythene was 260 gms. and if the polythene and *heroin* are weighed separately then recovered contraband would come out to be less than 250 gms., falling under category of non-commercial quantity, however I am not convinced with this contention. It has not been explained as to how after deducting weight of the polythene, the weight of the recovered *heroin* would be less than 250 gms. and from where it would be inferred that the weight of the polythene was 10 gms. or more. Normally, the polythene used for wrapping does not have that much weight. Merely on the basis of presumptions and suppositions, weight of polythene cannot be taken to be so, in order to bring the recovery under the category of non-commercial quantity and to further say that even if the weight of polythene is taken, the recovery is marginally more than commercial quantity. Bar of Section 37 of the the Narcotic Drugs and Psychotropic Substances Act cannot be avoided in such a manner. The legislature had enacted the Act with the purpose of controlling and minimizing drug peddling. The provision of Section 37 *ibid* was introduced as a deterrent to the drug peddlers.

17. As regards the reliance placed upon judgment dated 22.02.2021 passed in CRM-M-7407-2021 by learned counsel for the petitioner, the said judgment is of no use to the petitioner as the petitioner therein was stated to be not involved in any other criminal case, much less the Narcotic Drugs and Psychotropic Substances Act and recovery was also effected from a bag, which was lying in the vehicle, whereas in the instant case, the alleged recovery is effected from the pocket of petitioner. With regard to another judgment dated 18.08.2021 passed in CRM-M-22407-2021, which is sought to be relied upon by learned counsel for the petitioner, it appears that the

said judgment was passed considering the custody period of petitioner therein and the then prevailing situation of Covid-19 pandemic. Regarding the other judgment dated 20.11.2019 passed in CRM-M-48462-2019, it is noticed that in the said case, the petitioner therein was in custody since 05.08.2017 and he was also not involved in any other case, much less the Narcotic Drugs and Psychotropic Substances Act and another accused therein had also been granted bail.

18. Further in my considered opinion, when the accused is facing serious charges, he may develop temptation to jump the bail. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

19. Hence keeping in view the aforementioned circumstances and also the seriousness and gravity of offence, I do not deem it fit to extend the concession of regular bail to the petitioner. Accordingly, the present petition is dismissed.

20. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

21. All pending application(s), if any, shall also stand closed.

24.07.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No