

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

202

CRM-M-5850-2022.

Date of Decision: 27.07.2023.

Kamal Jyoti

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Lakshay Bector, Advocate for petitioner.

Mr. Jashandeep Singh, Assistant Advocate General, Punjab.

Lalit Batra, J.

This second petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Kamal Jyoti** in case FIR No.98 dated 19.06.2021 under Section 22 of NDPS Act (hereinafter to be referred as 'the Act' (Section 29 of the Act added lateron), registered at Police Station Division No.1, District Police Commissionerate, Ludhiana.

2. 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. Alleged recovery of contraband (1267 capsules containing salt Tramadol Hydrochloride weighing 796 grams and 40 tablets containing salt Alprazolam) shown to be effected at the instance of petitioner and co-accused, is planted one. No independent witness was joined by the Investigating Officer at the time of alleged recovery and further mandatory provisions of the Act were not complied with while

contraband as alleged recovery of contraband was effected from vehicle make Mahindra Maximum bearing registration No.PB-10DM-3652. Even otherwise, Investigating Officer did not use body cameras while laying the barricade and checking on the basis of alleged secret information, which is mandatory as per the policy instructions of the State Government. Co-accused Manmohan Singh has already been extended the concession of pre-arrest bail by this Court, vide order dated 02.11.2021 passed in CRM-M-26734-2021.

3. Learned counsel for petitioner while relying on the judgment of Hon'ble Supreme Court in **Nitish Adhikary @ Bapan vs. State of West Bengal**, SLP (Crl.) No.5769 decided on 01.08.2022 submits that in that case accused who had undergone custody for a period of 01 year and 07 months was granted bail on the ground that trial was at a preliminary stage, as only one witnesses was examined and accused had no criminal antecedents. He further urges that petitioner is not involved in any other case under the provisions of the Act. Petitioner is languishing in custody since 19.06.2021 and final report as envisaged under Section 173 Cr.P.C. (*Challan*) has already presented in the Court. 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.

4. On the other hand, learned State counsel while opposing instant petition has vehemently argued that on 19.06.2021 petitioner was apprehended while having conscious possession of contraband (1267 capsules containing salt Tramadol Hydrochloride weighing 796 grams and 40 tablets containing salt Alprazolam). No illegality or impropriety has been

committed by the Investigating Agency during the course of investigation. Though efforts were made to join public witness but to no avail. The vehicle used in the commission of offence i.e. Mahindra Maximum bearing registration No.PB-10DM-3652 is registered in the name of Sandeep Sharma, brother of petitioner, and the said fact has been got verified from the Office of Punjab Transport Department Authority, (RTA) Ludhiana. As per FSL report, above said contraband was found containing "Tramadol Hydrochloride" and total weight of the contraband containing Tramadol Hydrochloride came to 796 grams - 588 milligrams, whereas total weight of tablets containing Alprazolam came to 4 grams – 88 milligrams, which falls under "commercial quantity" and, thus, there is bar for grant of bail as envisaged under Section 37 of Act.

5. Learned State counsel 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. Out of total fifteen (15) prosecution witnesses, six (06) witnesses have already been examined, whereas two (02) witnesses have been given up as unnecessary and earnest and sincere efforts are being made at the instance of Prosecuting Agency to examine the remainder of prosecution witnesses while seeking short adjournments. He further urges that co-accused Manmohan Singh has been arrayed as accused on the disclosure statements of petitioner and co-accused Jaspal Singh while invoking provisions of Section 29 of the Act. In view of commercial quantity of contraband recovered from the petitioner and bar created by Section 37 of the Act, petitioner does not deserve the concession of bail.

6. I have heard learned counsel for the parties and have carefully gone through the contents of petition, status report as well as record of the case.

7. 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.”*

8. 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.”

9. Allegedly, petitioner was apprehended while having conscious possession of 1267 intoxicant capsules and 40 intoxicant tablets. Vide FSL report, above said contraband was found containing “Tramadol Hydrochloride” and the actual quantity of the contraband containing “Tramadol Hydrochloride” comes to 796 grams - 588 milligrams, whereas actual weight of tablets containing “Alprazolam” comes to 4 grams – 88 milligrams.

10. The judgment (Nitish Adhikary @ Bapan's case (supra) relied upon by learned counsel for the petitioner is distinguishable on facts as in the instant case the trial of the case is at advanced stage as out of total fifteen (15) prosecution witnesses, six (06) witnesses have already been

and earnest and sincere efforts are being made at the instance of Prosecuting Agency to examine the remainder of prosecution witnesses while seeking short adjournments.

11. 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 Act, he does not deserve the concession of bail.

12. As a sequel to above, instant petition for grant of regular bail moved by petitioner, being devoid of merits, is dismissed.

(LALIT BATRA)
JUDGE

27.07.2023

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