

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

CRM-M-8155-2023 (O&M)
Date of Decision: 07.08.2023

Labh Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Peeush Gagneja, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, A.A.G., Punjab.

HARSH BUNGER, J.

1. Petitioner (Labh Singh) has filed this petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.0103 dated 10.07.2022, under Sections 22(c) and 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), (Challan presented under Sections 22A/22C/29 of the NDPS Act), registered at Police Station Gidderbaha, District Sri Muktsar Sahib.
2. Status report by way of an affidavit of Sh. Jasbir Singh, PPS, Deputy Superintendent of Police, Sub-Division Gidderbaha, District Sri Muktsar Sahib, on behalf of respondent-State of Punjab, has been filed, which is already on record.
3. Custody certificate dated 06.05.2023, of the petitioner has

been filed by learned State counsel, which is taken on record, subject to all just exceptions.

4. Succinctly, the afore-said case FIR has been registered on the basis of *ruqa* sent by Sub Inspector Gurlal Singh, Police Station Gidderbaha, wherein, it is stated that on 10.07.2022, he along with other fellow employees was present in the police station when one written information was received from ASI Raghbir Singh, who had stated that while he (ASI Raghbir Singh) along with fellow employees was present near the park of Village Gidderbaha, in a private vehicle for patrolling and checking of suspects, then on account of the street being congested, they parked the car near the park and they were going on foot in the street and from the opposite side, one man and a woman, who were holding one polythene bag each in their hands and on seeing the police party, they threw the polythene bags held in their hands and turned back, however, they were apprehended by the police party on the basis of suspicion. Upon enquiring about their particulars, the man is stated to have told his name as Labh Singh (petitioner) and the woman told her name as Parwinder Kaur @ Beant Kaur wife of Labh Singh. Both the said persons were stated to be husband and wife. It is stated in the *ruqa* that when the afore-said ASI Raghbir Singh went near the transparent polythene bags thrown by the afore-said apprehended persons then from both the bags, strips of medicines were clearly visible. Accordingly, on the basis of suspicion of having intoxicating tablets, the competent officer was called at the spot. On receipt of the afore-said information in the police station, the Sub Inspector Gurlal Singh, made necessary entries in the *roznamcha* and proceeded to the spot along with the police party; where ASI Raghbir Singh along with the apprehended persons and the strips of tablets in the transparent polythene

bags, were present. After following the process, the search was conducted. From the transparent polythene bags allegedly thrown by Parwinder Kaur, three strips (each containing 15 tablets, total 45 tablets and one trimmed strip, containing 5 tablets, thus total 50 tablets mark *Etizolam Tablets IP Etizola 0.5*, whose batch number is B.No.KEC 2202 A, MFG 03/2022, Exp. 02/2025, were recovered. Similarly from the transparent polythene bag thrown by Labh Singh (petitioner), *06 strips (in each strip 10/10 tablets), total 60 tablets; mark ALPRASAFE 0.5 Alprazolam tablets IP 0.5 mg, whose batch number is PCCAA 691, MFG DATE 07/2020, EXPIRY DATE 06/2023*, were recovered. The personal search of Parwinder Kaur was conducted through lady Constable Lovepreet Kaur; however, no other intoxicating substance or objectionable articles were found, apart from 06 notes of Rupees 100/-, total Rs.600/-. From the personal search of Labh Singh (petitioner), no other intoxicating substance or objectionable article was found, except one note of Rs.100/-.

5. Accordingly, the FIR in question was registered and the accused were arrested.

6. As per the status report, the samples of the recovered contraband were sent to the Forensic Science Laboratory, Bathinda, for analysis; whereupon, the FSL report dated 16.08.2022 (Annexure R/1) was received, the relevant extract thereof reads as under :-

“6. Articles received : Two parcels marked as 1 and 2 in the laboratory. Parcel 1 was alleged to be seized from S/v Parwinder Kaur and parcel 2 was alleged to be seized from S/v Labh Singh. Each parcel was sealed with one seal of AK and alleged to contain intoxicating tablets. Seal on the parcel was found intact and tallied with the specimen seal impression.

On opening the parcels 1 and 2 were found to contain the following :

Parcel 1 : Fifteen (15) white coloured tablets in a strip labeled as Etizola 0.5 Etizolam tablets IP bearing Batch No.KE2202A, Mfg. 03/2022, Exp. 02/2025.

Average weight = 56.97 mg/tablet

Parcel 2 : Twenty (20) peach coloured tablets in two strips, each strip labeled as Alprasafe 0.5, Alprazolam tablets IP 0.5 mg. bearing Batch No.PCCAA691 Mfg. 07/2020, Exp. 06/2023

Avg. 124.63 tablet

- 7. Purpose of reference : Analysis and report*
- 8. Identification & Tests :*

<i>Ingredient present</i>	<i>Average quantity of ingredient present in parcels</i>	
	<i>Parcel 1</i>	<i>Parcel 2</i>
<i>Etizolam</i>	<i>0.49 mg./tablet</i>	
<i>Alprazolam</i>		<i>0.48 mg./tablet</i>

REPORT

The tablets contained in the parcels 1 and 2 under reference have been analysed separately by the chemical, TLC and instrumental analysis. On the basis of analysis, the ingredients alongwith their quantities found present in parcels 1 and 2 have been given at Sr.No.8 (identification and tests) of this report.”

- 7. The petitioner applied for regular bail before the Court of learned Additional Sessions Judge, Sri Muktsar Sahib; however, the same was dismissed vide order dated 26.08.2022. Accordingly, the present petition has been filed before this Court.
- 8. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case as no offence (as alleged) has been committed by him. It is submitted that the petitioner and his wife (co-accused) are having three children (two sons and one daughter), out of which, one elder son is a drug addict and was admitted in the Re-habilitation Centre at Sri Ganganagar and other two children are

minors and with the arrest of the petitioner as well as his wife, there is no one to look after the minor children.

9. Learned counsel for the petitioner submits that the provision of the NDPS Act have not been complied with and a joint Recovery Memo has been wrongly prepared in this case, although as per the Forensic Science Laboratory Report, two parcels have been examined and both the parcels are stated to have been recovered from petitioner and Parminder Kaur, separately. Learned counsel for the petitioner further relies upon technical opinion dated 02.11.2022 (Annexure P-8) in this case, which reads as under:-

“In reference to subject cited it is stated that I have seen the copy of FSL report in the present case. As per letter No. 2030-5A dated 21.10.2022, 50 tablets of ETIZOLA 0.5 (Etizolam tablets 0.5 mg) and 60 tablets of ALPRASAFE -0.5 (Alprazolam Tablets I.P 0.5 mg) have been recovered. As per FSL report, each tablet of ETEZOLA 0.5 contains drug Etizolam which is a psychotropic substance hence covered under N.D.P.S Act 1985. As per FSL report, average weight of ETEZOLA 0.5 tablet is 56.27mg and total weight of 50 tablets is 2.84gm. It is above commercial quantity. As per FSL report, each tablet of ALPRASAFE -0.5 contains drug Alprazolam which is a psychotropic substance hence covered under N.D.P.S Act 1985. As per FSL report, average weight of of ALPRASAFE -0.5 tablet is 124.63mg and total weight of 60 tablets is 7.47gm. It is more than small quantity but less than commercial quantity.”

Note: 1. This is only a technical opinion, legal opinion can be taken from District Attorney.

2. Drug Inspector/Drugs Control Officer has not been notified under N.D.P.S Act, 1985.”

10. While referring to the above extracted technical report, learned counsel for the petitioner submits that in case the recovery allegedly effected from the petitioner alone is seen then the same falls in the category of “Intermediate Quantity”. It is further submitted that the petitioner is in

custody since 10.07.2022; the investigation in this case is complete and the challan stands presented, wherein total 13 witnesses have been cited, thus trial is likely to take time to conclude. It is submitted that the petitioner is not involved in any other case under the NDPS Act and he is ready to abide by any condition as may be imposed by this Court or by the trial Court, accordingly prayer for regular bail is made.

11. Per contra, learned State Counsel has opposed the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. While referring to the status report, learned State counsel has submitted that the recovered contraband falls within the ambit of “Commercial Quantity” and thus bar under Section 37 of NDPS Act would be attracted. 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.

12. I have heard learned counsel for the parties and have perused the paper book, status report, custody certificate of the petitioner with their able assistance.

13. In the instant case, the recovered contraband falls in the category of “Commercial Quantity”. The issue raised by counsel for the petitioner that alleged recovery effected from the petitioner alone is to be considered and not the collective total recovery effected from petitioner and his co-accused by preparing a joint Recovery Memo shall be subject matter of trial.

14. Since the recovered contraband falls in category of “Commercial Quantity”, thus bar under Section 37 of the Narcotic Drugs

and Psychotropic Substances Act is attracted. 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.”

15. 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.

16. 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."

17. 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. Although, the petitioner was arrested on 10.07.2022, investigation in the case is complete and challan stands presented, however, material witnesses are yet to be examined in this case.

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.

07.08.2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No