

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

**CRM-M-13365-2023
DECIDED ON: 16.03.2023**

RAJ KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. S.K. Yadav, Advocate for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

This is a petition under Section 438 Cr.P.C., for grant of anticipatory bail to the petitioner in FIR No.66, dated 31.08.2022, under Sections 18/29 of the NDPS Act, registered at Police Station Sadar Phagwara, District Kapurthala.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case, merely on the basis of disclosure statement of co-accused Jaspal Singh @ Jassa, who was arrested at the spot and from whom recovery of 2 kg 600 grams of opium was effected. He further submits that the custodial interrogation of the petitioner is not required as the contraband has already been recovered from the possession of main accused Jaspal Singh @ Jassa and now nothing remains to be recovered from the possession of the petitioner. It is also submitted by learned counsel for the petitioner that there is no direct or indirect evidence against the petitioner to connect him with the commissioning of the alleged offence.

Notice of motion.

On the asking of the Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of the respondent-State and submits that thought the recovery was

effected from the main accused but the same falls under the commercial quantity. Accordingly, he prays for dismissal of the present petition.

To record 'finding of innocence' for granting the relief of anticipatory bail to the petitioner, this court is not called upon to record a finding of not guilty and it is only required to see if there are reasonable grounds of its belief. It does not mandate the court to enter into a domain as if it is pronouncing a judgment of acquittal and recording a finding of not guilty. Such an exercise, if conducted by the court, is likely to defeat the prosecution case even before a trial is concluded.

The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of “reasonable grounds” for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act.

The Hon’ble Supreme Court elaborated the expression “reasonable ground” in '*Customs, New Delhi v Ahmadalieva Nodira*' 2004 (2) RCR (Criminal) 192 and '*State of Kerala v Rajesh*' 2020 (1) RCR (Criminal) 818, which can be read as under:

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated

regarding the accused being not guilty has to be based on reasonable grounds. 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.

[emphasis added]

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.”

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Further Section 37 of the NDPS Act, envisaged to twin conditions:

The court’s satisfaction that there were reasonable grounds for believing that the accused was not guilty; and he was not likely to commit any offence while on bail.

The statute used “three expressions” — “the court is satisfied”; “reasonable grounds”, and “believing that the accused is not guilty”, and as such, it does not restrain the Court from exercising its jurisdiction. The requirement of recording reasons would not mean to record in writing establishing that an accused is innocent’. Hence it is the subjective satisfaction of the court based on an objective assessment of the material brought before it for giving a reasonable ground to sustain a belief.

In another case, the Apex Court in '**Narcotics Control Bureau Versus Mohit Aggarwal**', **Crl.A. No.1001-1002 of 2022, decided on 19th July, 2022**, held as under:

"10. The provisions of Section 37 of the NDPS Act read as follows: 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 subsection (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."

A thorough discussion and the above referred case law crystalize the meaning of “reasonable grounds” used in Section 37(1)(b) of the NDPS Act as credible, plausible grounds for the Court to believe that the accused person is not guilty of the alleged offence. However, bail under the said section cannot be granted merely on the ground that nothing was found from the possession of the accused.

As strongly asserted by the learned State counsel there is sufficient and cogent evidence which is sufficient for this court to draw an inference that there are reasonable grounds to believe the petitioner’s active and regular involvement in drug peddling.

This Court is also obvious of the prevailing circumstance, wherein drug abuse is a social malady. While drug addiction eats into the vitals of the

society, drug trafficking not only eats into the vitals of the economy of a country, but to the economy of the State/country by generating illicit money.

The drug peddlers have successfully destroyed not only the social fabric of the society but finishing the youth, who are future generation of the country. Such accused need to be dealt with firmly and sternly with no sympathy to be shown to them particularly in the case in hand, wherein the petitioner is involved in smuggling of dangerous contraband at the international borders.

In the light of discussion made hereinabove and looking into the cogent material before this Court, it is not in dispute that the recovery i.e., 2 kg 600 grams of opium, was effected from the co-accused Jaspal Singh @ Jassa, which is commercial in nature. At the same time, it is not out of place to mention here that Jaspal Singh @ Jassa, from whom the contraband was recovered is the real brother of the petitioner, who himself nominated his brother as an accused in the present case.

In view of the aforesaid discussion, this Court is of the considered view that the custodial interrogation of the petitioner is required to unearth all the ramifications involved in the present case.

Accordingly, the present petition is dismissed having no merits.

(SANDEEP MOUDGIL)
JUDGE

16.03.2023

Poonam Negi

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>