

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

CRM-M-18414-2023 (O&M)

Date of Decision: 31.07.2023

BALVIR SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Mohit Vashishat, Advocate
for the petitioner.

Mr. M.S. Tiwana, A.A.G., Punjab.

HARSH BUNGER, J.

Petitioner (Balvir Singh) has filed this petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.82 dated 07.06.2022 (Annexure P-1), under Sections 15, 18, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act, 1985'), registered at Police Station City – 2, Khanna.

2. Custody certificate dated 30.05.2023 of the petitioner has been filed by learned State counsel, in the Court, which has been taken on record vide order dated 31.05.2023.

3. Briefly, the afore-said case FIR was registered on the basis of *ruqa* sent by one Vinod Kumar, Incharge, C.I.A. Staff, Khanna; wherein, it was stated that on 07.06.2022, he along with other police officials was present at Delhi-Ludhiana Highway, on a government vehicle bearing registration No.PB-10-GK-6173 (make 'Balero'), in front of Pristine Mall, G.T. Road, Khanna, in relation to patrolling/search of suspicious/bad elements and were conducting checking of vehicles coming from the side of

Mandi Gobindgarh. At about 2:00 p.m., one truck bearing registration No.PB-05-T-9195 came from the side of Mandi Gobindgarh, which was stopped by the police party on the basis of suspicion and two Sikh men were present therein. Upon enquiry, the driver disclosed his name as Tirath Singh son of Joginder Singh resident of Begepur, Police Station Kacha Pacca, District Tarn Taran and the other person disclosed his name as Balbir Singh son of Pishora Singh resident of Village Lohka, Police Station Patti, District Tarn Taran. They were made aware of their legal rights regarding search etc.; whereupon, both the afore-said persons namely, Tirath Singh and Balbir Singh, jointly stated that they wanted to get their search as well as the search of their truck conducted in the presence of a higher official. Accordingly, one Rajan Parminder Singh, PPS, DSP (SD), Khanna, was requested to reach at the spot after informing him about the circumstances. Upon arrival of said RajanParminder Singh, PPS, DSP (SD), Khanna, on the spot, he introduced himself to the apprehended persons namely Tirath Singh and Balbir Singh and after following the procedure, made them aware of their legal rights of getting their search as well as the search of their truck conducted since they were suspicion of intoxicating substance therein; whereupon, the said persons jointly stated that they had faith in the said officer (DSP) and said that he can conduct their search as well as the search of their truck (PB-05-T-9195). After following the procedure, the search of the truck was conducted and one heavy black coloured polythene bag was recovered from the cabin above the driver side and after opening it, the same was sniffed and *opium* was found therein. The recovered *opium* was weighed with the electronic scale and the same was found to be 3 kgs. along with polythene bag.

Thereafter, upon search on truck's terrace, one white coloured heavy plastic

gunny bag was recovered, which was sealed. The said gunny bag was checked, from which *poppy husk* was recovered. On weighing the said gunny bag containing *poppy husk*, the same was found to be 20 kgs. Accordingly, the *ruqa* was sent to the police station for registration of the FIR, which was registered and the afore-said persons namely, Tirath Singh and Balbir Singh, were arrested.

4. The petitioner had applied for regular bail before the learned Judge, Special Court, Ludhiana; however, the same was dismissed vide order dated 20.02.2023. Accordingly, the present petition has been filed before this Court.

5. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case, whereas, he has nothing to do with the alleged recovery of 20 kgs. of *poppy husk* and 03 kgs. of *opium*. He further submits that the petitioner has been in custody since 07.06.2022; investigation of this case is complete and challan stands presented. The trial is likely to take some time. Hence, no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. Learned counsel further submits that except the present case, no other case is there against the petitioner and he 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.

6. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. He submits that there is sufficient material to show the complicity of the petitioner in the crime. It is further submitted by learned State counsel that in the instant case, the recovery of 20 kgs. of *poppy husk* and 03 kgs. of *opium* from the petitioner, falls under the category of “commercial

quantity” and hence, the rigors of Section 37 of the NDPS Act, 1985 are attracted. However, it is not disputed by learned State counsel that no other case, except the present one, is pending against the petitioner. It is also submitted by learned State counsel that in case, the petitioner is extended the benefit of regular bail then there is every likelihood that he may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, it is urged that the petitioner do not deserve the concession of regular bail and thus the instant petition may be dismissed.

7. I have heard learned counsel for the parties; perused the paper book and custody certificate of the petitioner dated 30.05.2023 filed by learned State counsel, which is already on record.

8. In the instant case, the petitioner was apprehended on the spot with contraband, which falls under the category of “Commercial Quantity” and thus the rigors of Section 37 of NDPS Act are attracted. Section 37 of the NDPS Act, 1985, is reproduced hereunder:-

“[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.].”

9. In ***Union of India v. Rattan Mallik @ Habul, 2009 (1) RCR (Criminal) 938***, the Apex Court 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.

10. Furthermore, in ***State of Kerala etc. v. Rajesh etc., 2020(1) RCR (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".

11. Keeping in view the facts and circumstances of this case, especially the recovery of huge quantity of contraband (20 kgs. of poppy husk

and 03 kgs. of *opium*), there is nothing on record so as to enable this Court to record a *prima facie* satisfaction as required under Section 37 of the NDPS Act. Moreover, 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.

12. Thus in my considered view, the gravity and seriousness of allegations with likelihood of petitioner tampering with the prosecution evidence and even absconding being there, no ground for grant of regular bail to the petitioner is made out. Accordingly, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Tirath Singh) in case FIR No.82 dated 07.06.2022 (Annexure P-1) under Sections 15, 18, 25 and 29 of the NDPS Act, 1985, registered at Police Station City 2, Khanna; is dismissed.

13. Nothing stated here-in-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.

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

July 31st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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