

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

CRM-M-24096-2023 (O&M)

Date of decision: 18.08.2023

SUMAN ALIAS BALO

....Petitioner

Versus

STATE OF U.T. CHANDIGARH

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Parminder Walia, Advocate
for the petitioner.

Mr. Shashank Bhandari, Addl. P.P. U.T., Chandigarh.

HARSH BUNGER, J.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, for granting regular bail to the petitioner in case FIR No.0144 dated 17.09.2021, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Industrial Area, Chandigarh.

2. Status report dated 17.08.2023 by way of an affidavit of Sh. Udaypal Singh, CPS, Deputy Superintendent of Police, Crime, U.T. Chandigarh, on behalf of respondent-U.T. Chandigarh, has been filed in the Court today and the same is taken on record, subject to all just exceptions.

3. Custody certificate dated 18.08.2023, of the petitioner has been filed by learned State counsel in the Court today and the same is taken on record, subject to all just exceptions.

4. Briefly, the afore-said case FIR was registered on the basis of *ruqa* sent by Sub Inspector-Sumer Singh; wherein, it was stated that he along with senior Constable/s Neeraj Kumar, Dharminder and lady Head Constable Renu Sharma as well as Lady Constable Savita Lamba, were patrolling near Traffic Line, Sector 29, Chandigarh, on Government Vehicle No.CH01-GA-6106 driven by ASI Harjinder Singh. It was stated that they parked their vehicle in front of the park near Traffic Line and were patrolling the area on foot as there was increase in the crime rate of snatching and theft and after sometime, while they were passing through the park of Sector 28 at about 3:10 p.m., and when they reached to Electricity Pole No.97 near Superintendent Water Link Section, Sub-Division No.4, Sector 29, Chandigarh, then a lady driving 'Silver' coloured Activa, having white colour plastic bag, was seen coming from Sector 28/29 dividing road towards Traffic Line and upon seeing the police party, she suddenly stopped her Activa and tried to turn back; whereupon, the police party got suspicious that she might be having theft articles in her bag or the Activa may be stolen; accordingly, the police party stopped the Activa and upon inquiry, she disclosed her name as Suman alias Bala alias Balo wife of Sanjeev Kumar, resident of 5, Vasudeva Pura, Block No.1, Police Station Kalka, District Panchkula (Haryana). It was further stated that the bag, which the afore-said lady was carrying on her Activa, was taken down and after opening the same, it was checked and *ganja* was found therein. The police party tried to convince the passers-by for becoming witness; however, everyone gave their personal reasons and went away from the spot. The afore-said lady namely, Suman could not produce any license/permit for keeping the recovered *ganja* in her possession. Upon weighing the recovered *ganja*, it came out to

be 21 kgs. After following the procedure, the samples were drawn and the recovered intoxicant substance was taken into police custody, after preparing the memos.

5. Learned counsel for the petitioner submits that the petitioner has not committed any offence as has been alleged in the FIR. It is contended that the alleged recovery has been foisted upon the petitioner and there is total non-compliance of the mandatory provisions of Section 50 of the NDPS Act. Learned counsel for the petitioner further submits that the petitioner has small children in her family and there is no one to look after them. It is contended that no recovery has been effected from the conscious possession of the petitioner and neither any independent witness has been joined by the police party. It is stated that the petitioner is innocent and belongs to a reputed family, having good source of income and there is no need of her to indulge in these kind of activities. It is further submitted that the petitioner has been falsely implicated in the case. It is next submitted that the petitioner is in custody since 17.09.2021; investigation qua her is complete and charges have been framed; thus the trial is likely to take some time; accordingly, no useful purpose would be served by keeping her behind the bars.

6. Learned counsel for the petitioner has further placed reliance upon the judgment of Hon'ble the Apex Court in *Nitish Adhikary @ Bapan v. State of West Bengal (Special Leave(Crl.) no. 5769 of 2022)*, to contend that since the petitioner has been custody since 17.09.2021; accordingly, she may be released on regular bail.

7. 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 has been made.

8. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of offence. While referring to the status report, learned counsel appearing for respondent-State of U.T. Chandigarh, submits that the final report under Section 173 Cr.P.C was presented on 08.03.2022 and the charges were framed on 28.03.2022; out of total 22 witnesses, 16 witnesses already stand examined. It is further contended that the contraband recovered from the petitioner falls under the category of commercial quantity and hence bar under Section 37 of the NDPS Act is attracted. It is next submitted that the petitioner does not have clean antecedents as she is involved in two other cases i.e. FIR No.254 of 2019 and FIR No.143 of 2017, both under Section 20 of the NDPS Act, registered at Police Station Pinjore and in one of the cases, she also stands convicted and sentenced. Learned State counsel further submits that heavy quantity of contraband without any license/permit has been recovered from the possession of the petitioner; hence, she is not entitled to the concession of regular bail. It is submitted that in case, the petitioner is enlarged on regular bail then she may tamper with the evidence and influence the material witnesses or she may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made.

9. I have heard learned counsel for the parties and perused the paper book, status report as well as custody certificate filed by learned State counsel.

10. Concededly, the recovery in this case 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.].”

11. 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.

12. 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".

13. In the instant case, although the charges have been framed on 28.03.2022; however, the trial is going on and out of total 22 witnesses, 16 witnesses already stands examined. Further, the twin satisfaction as envisaged under Section 37 of the NDPS Act, cannot be recorded in the present case moreso when the petitioner is involved in two more cases under the NDPS Act and she already stands convicted and sentenced in one of these cases.

14. Further, I am not impressed by the submissions made by learned counsel for the petitioner that since the petitioner has been custody since 17.09.2021; accordingly, she may be released on regular bail, in view of judgment of Hon'ble the Apex Court in *Nitish Adhikary @ Bapan's* case (supra). A perusal of order dated 01.08.2022 passed by the Hon'ble Supreme Court in the case of *Nitish Adhikary @ Bapan* (supra), would show that in the said case, the petitioner did not have criminal antecedents, whereas, in the instant case, the petitioner is stated to be involved in two other cases under the NDPS Act and is further stated to have been convicted under the NDPS Act; thus, no benefit of the afore-said order can be extended to the petitioner.

15. Keeping in view the facts and circumstances of this case, especially the petitioner is also involved in two other cases under the NDPS Act and the recovery in the present case is 21 kgs. of *ganja*, which is commercial, 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 petitioner is involved in other cases under the NDPS Act. 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. Furthermore, there is every possibility that the petitioner may take path of crime again, in case, he is enlarged on bail.

16. 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(Suman alias Balo) in case FIR No.0144 dated 17.09.2021, under Section 20 of the NDPS Act, registered at Police Station Industrial Area, Chandigarh; is dismissed.

17. 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.

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

August 18th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No