

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29577 of 2022 (O&M)

DECIDED ON: 9th February, 2023

Tarlochan Singh @ Tota

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Vijay Lath, Advocate for petitioner.

Mr. Iqbal Singh Mann, DAG Punjab.

AVNEESH JHINGAN, J (ORAL)

This is fourth petition seeking regular bail in case of FIR No. 77 dated 25.5.2021, under Section 15, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') registered at Police Station Sadar Rupnagar, District Rupnagar, Punjab. The earlier three petitions were withdrawn on 26.8.2021, 29.11.2021 and 28.3.2022.

The facts in brief are that on 25.5.2021 police acting upon a secret information checked Swift Car bearing registration No. PB-12-X-4549 and recovered 56 kgs of *Poppy Husk*. Petitioner-Tarlochan Singh was apprehended at the spot.

Learned counsel for the petitioner submits that the petitioner was neither the owner nor the driver of the car; he is not involved in any other case; recovery is marginally higher than the commercial quantity and the petitioner is suffering from *kidney stone* and *Hernia*. He relied upon decision of this Court in

Karandeep Singh @ Sunny Versus State of Punjab, 2022 (1) Cri.CC 506,

Sanjay Yadav @ Sanju Versus State of Punjab, CRM-M-22246 of 2021

Hearald 1803, Jeet Singh Versus State of Punjab CRM-M-30581 of 2021 decided on 10.8.2021 and Davinder Singh Versus State of Punjab, CRM-M-37152 of 2020 decided on 18.11.2020.

Learned State counsel relies upon Section 37 of the Act and submits that the recovery was of commercial quantity. The recovered contraband was 6 kg more than the quantity specified for commercial quantity in the Schedule to the Act and cannot be termed as marginally higher. He further submits that out of thirteen prosecution witnesses four have been examined. He on instructions from ASI Jaswinder Singh submits that since all the prosecution witnesses are police officials, earnest effort would be made for expeditious conclusion of the prosecution evidence.

It would be gainful to cite following decisions of supreme Court.

The Supreme Court in ***“Union of India vs. Shri Shiv Shanker Kesari, 2007 (4) RCR (Criminal) 186”*** held as follows :-

“6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and. that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.”

. [Emphasis supplied]

In ***State of Kerala etc. Versus Rajesh etc. 2020(1) RCR (Criminal) 818***, it was held:

"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 on 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."

[Emphasis supplied]

In Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19th July, 2022, it was held:

"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.]

The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “*Collector of Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549*”, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

“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]

In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

...emphasis supplied

In Union of India (NCB) etc Versus Khalil Uddin etc, 2022 (4) RCR (Criminal) 984 it was held:

“The High Court by its order which is presently under challenge, directed release of both the accused as stated above on bail after they had undergone custody to the tune of about a year. Questioning grant of relief to said

accused, the instant appeals have preferred.

However, going by the circumstances on record, at this stage, on the strength of the statement of Md. Nizam Uddin, though allegedly retracted later, the matter stands on a different footing. In our considered view, in the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail. We, therefore, allow these appeals, set aside the view taken by the High Court and direct that both the appeals be taken in custody forthwith.”

...emphasis supplied

It is not disputed that the petitioner was occupant of car and contraband recovered was of commercial quantity. It is not a case where the trial is not progressing, rather the trial is moving at a decent pace. It cannot be lost sight of that in cases where contraband recovered is of commercial quantity, 180 days are provided for presentation of the challan.

On instruction learned State counsel has submitted that the earnest effort would be made for concluding the prosecution evidence at the earliest.

The orders relied upon by learned counsel for the petitioners are of no avail in view of decision of Supreme Court cited above where scope and ambit of Section 37 of the Act has been specifically dealt with. Moreover, in the present case, there was recovery of 6 kgs over and above the quantity stipulated for commercial quantity. It would not be out of place to mention that not even an attempt was made to bring the case within the ambit of twin conditions mentioned in Section 37 of the Act. Considering the decisions of the Supreme Court cited above, custody period cannot be sole ground for grant of bail in view of the provisions of Section 37 of the Act.

No ground is made out for grant of bail.

There is nothing on record to show that the health issue cannot be treated in jail. There is no doubt that the jail authorities will provide the required medical treatment.

Dismissed.

Since the main case has been decided, pending application, if any is rendered infructuous.

9th February, 2023
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(AVNEESH JHINGAN)
JUDGE

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