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

**CRM-M-39868-2023
Date of Decision: 30.10.2023**

Balwinder Singh Punda

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Raman Singla, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J.

1. This is a second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Balwinder Singh Punda) for grant of regular bail in case bearing FIR No.14 dated 20.02.2020 (Annexure P-1), under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the N.D.P.S. Act'), registered at Police Station Subhanpur.

2. In pursuance to an advance notice served upon the State of Punjab, status report by way of affidavit dated 03.10.2023 of Mr. Bharat Bhushan, P.P.S., Deputy Superintendent of Police, Sub Division Bholath, Kapurthala and custody certificate dated 29.10.2023 of the petitioner have been filed on behalf of State of Punjab, which are already on record.

3. Briefly, the aforesaid case FIR was registered on the basis of a *ruqa* prepared by Assistant Sub Inspector Sukhchain Singh, who stated that on 20.02.2020, he along with his fellow employees were patrolling on their private vehicle, in search of bad elements. While going from Police Station Subhanpur to Village Dograwala to Hamira, when they reached underneath the bridge of Hamira then a secret informer came and informed that Balwinder Singh Punda s/o Nihal Singh and his brother Bunty, both residents of Hamira, were indulged in the business of selling *heroin* and intoxicant substances, and they were present near the area of Hamira and were supplying *heroin* and intoxicant substances. It was further informed that on the said date, i.e. 20.02.2020, the aforesaid persons were sitting in a mini bus and coming to the Village Hamira and if the barricading is done and the bus is stopped and checked then a huge quantity of *heroin* and intoxicant substance can be recovered from the aforesaid persons. Accordingly, the barricading was done and after some time, one mini bus came near the bridge of Hamira, which was stopped and both the above referred persons stepped down from the bus, who, upon seeing the police party, got perplexed and took out the polythene bags from their respective pockets and threw them on the road at different places and tried to run away; however, they were apprehended by the police. Upon enquiry, they disclosed their names as Balwinder Singh Punda (petitioner) s/o Nihal Singh r/o Hamira and Bunty s/o Nihal Singh r/o Hamira.

4. After following the due procedure, the search was carried out and 520 grams of intoxicant substance was recovered from one bag; from another bag, 40 grams of *heroin* was recovered and from the third polythene, 510 grams of intoxicant substance was recovered.

5. As per the status report, the samples prepared from the recovered intoxicant material were sent to the Forensic Science Laboratory, whereupon the report was received, wherein it was opined as under:-

“the contents of the parcel No.1, 2 and 3 under reference have been analysis separately by chemical, TLC and instrumental analysis, on the basis of analysis (1) 34.32% Diacetylmorphine (Heroin) has been found present in the content of parcel no.1 (2) 0.10% and 0.11% Alprazolam in the content of parcel no.2 and 3 respectively.”

6. As per the status report, the petitioner was earlier granted bail by this Court, awaiting the Forensic Science Laboratory Report, however, upon receipt of the same, the trial Court issued non-bailable warrants against the petitioner as the contraband recovered from him fell under the 'commercial quantity'. It is stated in the status report that the petitioner thereafter applied for grant of anticipatory bail before this Court, which was dismissed as withdrawn vide order dated 21.12.2020, and the petitioner was directed to surrender before the trial Court; and accordingly, the petitioner is stated to have surrendered on 11.01.2021.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case. It is submitted that the alleged recovery has been foisted upon the petitioner. Learned counsel contends that even as per the allegations levelled in the instant FIR, the alleged recovery has been made from a thoroughfare and no person was joined as an independent witness, as such, the prosecution story is highly doubtful and the same is only based upon the testimonies of the official witnesses. Learned counsel for the petitioner further contends that there has been violation of mandatory provisions of the N.D.P.S. Act in the

instant case.

8. Learned counsel for the petitioner submits that the learned Judge, Special Court, Kapurthala has wrongly dismissed the application for regular bail filed on behalf of the petitioner, vide order dated 05.07.2021 (Annexure P-4). Learned counsel further submits that the petitioner is in custody since 25.02.2020, i.e. almost three years; investigation in the case is complete and challan stands presented, thus trial in the case is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period. Learned counsel for the petitioner states 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 is made.

9. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the intoxicant material recovered from the petitioner falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the N.D.P.S. Act are attracted in this case. Learned State counsel submits that the petitioner does not have clear antecedents as he is also involved in six other cases, being FIR No.121 dated 14.08.2008, registered under Sections 380 and 457 of the Indian Penal Code, FIR No.43 dated 11.05.2010, registered under Sections 148, 149, 323, 427, 452 and 506 of the Indian Penal Code, FIR No.99 dated 18.10.2010, registered under Section 61-1 of the Excise Act, FIR No.106 dated 15.10.2014, registered under Sections 21/29 of the NDPS Act, FIR No.150 dated 31.10.2017, registered under Section 22 of the NDPS Act and FIR No.154 dated 21.12.2020, registered under Sections 148, 149, 186, 332 & 353 of the Indian Penal Code and Sections 21 & 22 of the NDPS Act. 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.

10. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced herein below :-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

11. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

12. In the instant case, the alleged recovery effected from the petitioner is of 520 grams of intoxicant powder and 40 grams of *heroin*, which falls under the category of 'commercial quantity' and thus rigors of Section 37 of the N.D.P.S. Act are attracted in this case. 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.”

13. 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.

14. 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.

15. 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, especially when the petitioner is stated to be involved in six more cases, out of which, one is registered under the Excise Act and three are registered under the N.D.P.S. Act. Further, it has been mentioned in the status report that in case FIR No.106 dated 15.10.2014, registered under Sections 21 and 29 of the N.D.P.S. Act, the petitioner stands convicted whereas in other two case FIRs registered under the N.D.P.S. Act, the trial is pending.

16. 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.

17. It is a matter of common knowledge that drug menace is ruining the lives of many of the young people. The drug peddlers, for their own monetary gains, are misleading the youth towards drugs consumption, which is not only affecting these young people but is also affecting their families. The drug menace and the drugs peddlers are required to be dealt with stern and firm hands.

18. 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. However, learned trial Court is directed to expedite the trial, if possible.

19. 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.

20. All pending application(s), if any, shall also stand closed.

30.10.2023

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No