

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49340-2021 (O&M)
DECIDED ON:10th FEBRUARY, 2023

VISHNU BHUSHAN

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Karanjeet Singh Brar, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

SANDEEP MOUDGIL, J

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 59, dated 17.09.2021, under Sections 22 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, registered at Police Station Amir Khas, District Fazilka.

The contention of learned counsel for the petitioner is that the present case has been registered on the basis of secret information and the present petitioner was found to be in possession of 22,000 tablets make Tramaol Prolonged Release Tablets Corlividol-100-SR. It is asserted that the petitioner was neither at the place of occurrence nor any recovery, has been effected from him. It is further asserted that there is a non-compliance of Section 100 Cr.P.C.

Custody certificate of the petitioner filed by the counsel for the State is taken on record. According to which the petitioner has undergone the

incarceration for a period of 1 year 4 month and 23 days. He opposes the prayer made in the present petition stating that the quantity recovered from the petitioner is of commercial in nature.

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.”

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 is 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.

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., 22,000 intoxicating tablets was effected from the petitioner, which is commercial in nature.

Accordingly, the present petition is dismissed having no merits

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case

10th FEBRUARY, 2023
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(SANDEEP MOUDGIL)
JUDGE

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