

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

CRM-M-53380-2021 (O&M)

Date of Decision: 12.01.2023

KISHORE KUMAR

...Petitioner

Versus

UNION TERRITORY OF CHANDIGARH

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Deepinder Brar, APP., U.T. Chandigarh.

HARSH BUNGER, J. (ORAL)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, seeking regular bail in case FIR No.148 dated 13.09.2019 (Annexure P-1), registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act, 1985'), at Police Station Maloya, District Chandigarh.

Briefly stated, the facts of the case as per prosecution version are that on 13.09.2019, while the police party headed by Sub Inspector Sombir Singh, was on patrolling duty in a private vehicle in view of snatching and theft incidents then after parking their vehicles near Gurudwara, Sector 38 West, they started moving towards Dadu Majra Colony from Shahpur light point on foot. Around 4:00 p.m., one hindu young man with white coloured carry bag in his left hand was seen coming towards Shahpur light point from the side of Dadu Majra colony, on foot and on seeing the police party, he moved back and started to run towards

the side of Dadu Majra Colony, whereupon, the Sub Inspector got suspicious and the said person was apprehended at some distance by the police party, from whom, *12 injections Buprenorphine (2 ml. each)* and *12 injections Pheniramine (10 ml. each)* have been recovered. On asking, the said young man disclosed his name as Kishore Kumar @ Onny (petitioner) son of Mishri Lal resident of House No.569/1, Sector 38-A, Chandigarh. After carrying out the formalities, the FIR in question was registered. Thereafter, the petitioner applied for regular bail before the Judge, Special Court, Chandigarh; however, the same was dismissed on 17.11.2021.

Accordingly, the present petition has been filed by the petitioner before this Court under Section 439 of the Code of Criminal Procedure, seeking regular bail.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case and the alleged recovery has been foisted upon him. It is further submitted that the mandatory provisions of Section 50 of the NDPS Act, 1985, have not been complied with. He further submitted that the petitioner is ready to abide by all conditions as imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail has been made.

Per contra, learned counsel appearing for the respondent-State/U.T., Chandigarh, has opposed the prayer of bail made by the petitioner on the ground of seriousness of offence. It is further submitted that the contraband recovered from the petitioner is commercial in nature and the bar of Section 37 of the NDPS Act, 1985, comes into play. While referring to the custody certificate dated 11.09.2022, it is submitted that the petitioner is involved in many other cases, including the cases under the

NDPS Act, 1985, detail thereof, is mentioned hereunder :-

Sr. No.	FIR/DDR No./under Section	Police Station	Status
1	<i>FIR No.129 of 2014 Under Sections 452, 323, 148, 149 and 427 IPC</i>	<i>Division No.7, Ludhiana (Punjab)</i>	<i>Already on bail vide order dated 21.12.2019 passed by Additional Sessions Judge, Ludhiana.</i>
2	<i>DDR No.94 dated 03.08.2006 Under Sections 107 and 151 of Cr.P.C.</i>	<i>Sector 39, Chandigarh</i>	<i>Released on bail vide orders dated 04.08.2006 passed by SDM(S), Chandigarh.</i>
3	<i>FIR No.62 of 2006 Under Section 21 of NDPS Act</i>	<i>Sector 17, Chandigarh</i>	<i>Released on bail vide orders dated 13.03.2006 passed by Additional Sessions Judge, Chandigarh.</i>
4	<i>FIR No.465 dated 03.12.2005 Under Section 21 of the NDPS Act.</i>	<i>Sector 39, Chandigarh</i>	<i>Released on bail vide orders dated 14.12.2005, passed by Additional Sessions Judge, Chandigarh.</i>
5	<i>FIR No.121 dated 23.04.2014 Under Section 21 of the NDPS Act</i>	<i>Sector 39, Chandigarh</i>	<i>Convicted to undergo rigorous imprisonment for 03 months with fine of Rs.3000/-, vide orders of Additional Sessions Judge, Chandigarh passed on 09.07.2015. Thereafter, released on bail vide order dated 11.08.2015 passed by Judicial Magistrate Ist Class, Chandigarh.</i>
6	<i>FIR No.524 dated 16.09.2008 Under Section 21 of the NDPS Act</i>	<i>Sector 39, Chandigarh</i>	<i>Convicted for the period of already undergone and pay fine of Rs.2500/- and in default thereof RI 15 days (fine paid in the Court) vide orders dated 30.05.2013 passed by Judicial Magistrate Ist Class, Chandigarh.</i>
7	<i>FIR No.243 dated 30.06.2017 Under Section 20 of the NDPS Act</i>	<i>Sector 39, Chandigarh</i>	<i>Convicted for the period of already undergone vide order dated 02.06.2022 passed by Judicial Magistrate Ist Class, Chandigarh.</i>

It is submitted that involvement of the petitioner in number of cases shows that he is the habitual offender and hence, he is not entitled to the concession of regular bail.

I have heard learned counsel for the parties and also perused the paper book along with custody certificate dated 11.09.2022.

A perusal of order dated 17.11.2021 passed by the Judge, Special Court, Chandigarh, would show that while declining regular bail to the petitioner, the following observations have been made therein :-

“4. File shows that this applicant/accused was apprehended on 13.09.2019 in the area of Sector 38 West, Chandigarh by the local police and 12 injections of Buprenorphine of 2 ml each i.e. total 24 ml were recovered from him. CFSL report shows that total weight of these injections was 24.2 grams. The same being of commercial nature, being above 20 gms, the bar of section 37(1)(b) of the NDPS Act comes into play. It is not possible for this Court to record a finding that applicant did not commit the offence, or that, in the event of grant of concession of bail, he shall not commit a similar offence.”

In view of above recorded observation that the contraband recovered from the petitioner falls under the category of commercial quantity, accordingly, the bar of Section 37 of the NDPS Act, 1985, get 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 3 [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.].”

Hon'ble the Apex Court in *Union of India vs Rattan Malik @ Habul 2009(1) RCR (Criminal) 938*, has held that when an accused is arrested in a case under the NDPS Act, 1985 then grant of bail to that accused is not only subject to limitation imposed under Section 439 of the Code of Criminal Procedure, but it is also subject to the restrictions placed by Section 37 of the NDPS Act, 1985 and the accused can be granted bail only if the Court is satisfied that there is a reasonable ground for believing that accused was not guilty of offence and also that he was not likely to commit any offence under the NDPS Act, 1985 while on bail.

In the present case, seeing the involvement of the petitioner in various other cases including the cases under the NDPS Act, 1985, I do not see any reason to record satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and also that, he is not likely to commit any offence while on bail. The petitioner *prima facie* appears to be a habitual criminal being involved in various cases and there is a reasonable apprehension that he might abscond and may also try to tamper with the prosecution evidence, if granted the concession of regular bail; therefore, finding no merit in this petition, the same is accordingly dismissed.

Nothing expressed here-in-above shall be construed to be an expression of opinion on merits of the case.

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

January 12, 2023
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(HARSH BUNGER)
JUDGE

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