

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

Date of decision: 19th January, 2023

(1) CRM-M-50669 of 2022

Rahul

Petitioner

Versus

State of Haryana

Respondent

(1) CRM-M-53477 of 2022

Mandeep

Petitioner

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sukhcharan S. Gill and Mr. K. S. Redhu, Advocates
for the petitioners.
Mr. Sharad Aggarwal, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

CRM-M-50669 of 2022 is the third petition seeking regular bail in FIR No. 447 dated 8.11.2020, under Sections 307 and 34 IPC and Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'the Act') and Section 25 of the Arms Act, 1959, registered at Police Station, Sadar Rohtak.

CRM-M-53477 of 2022 is the second bail petition in the aforesaid FIR.

In CRM-M-50669 of 2022, the first petition for bail was dismissed as withdrawn on 14.1.2022. The second petition for bail was

withdrawn on 11.5.2022 and following order was passed:

“These two petitions are filed seeking regular bail in case of FIR No. 447 dated 8.11.2020 registered under Sections 307/34 IPC and under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'the Act') and under Section 25 of Arms Act at P. S. Sadar, Rohtak.

As per the case set up on 8.11.2020 police party checked the vehicle bearing registration No. HR12AJ-0494 and 28 kg. of Ganja was recovered from the vehicle. The vehicle was driven by Mandeep and Rahul Kumar @ Rahul was the co-occupant and two sided sharp knife was recovered from Mandeep.

Learned counsel for the petitioners has argued that there was non-compliance of Section 42 and 50 of the Act. The recovery memo is typed, hence story of prosecution is improbable.

After arguing at some length, learned counsel for the petitioner(s) seek permission to withdraw the petitions at this stage.

Petitions are dismissed as withdrawn.

Since the main cases have been decided, the pending application, if any, also is disposed of as infructuous.

A photocopy of this order be placed on the file of connected case(s).”

The facts in brief are that on 8.11.2020, the police party during routine checking near turn of village Ghillour Kalan, signalled one Scorpio car coming from Rohtak side. The driver of the vehicle tried to run over the police party. The vehicle was driven by Mandeep (petitioner in CRM-M-53477 of 2022). Rahul (petitioner in CRM-M-50669 of 2022) was the co-occupant. 28 kgs. of Ganja and a knife was recovered. The third occupant of the vehicle, namely, Parvesh fled from the spot. He was named by the co-accused.

Learned counsel for the petitioners submit that the petitioners

are in custody since 8.11.2020. It is further submitted that the co-accused was granted bail by this court. Reliance is placed upon orders of the Supreme Court in ***Mohammad Salman Hanif Shaikh v. The State of Gujarat***, SLP (Crl.) No. 5530 of 2022, decided on 22.8.2022; ***Gopal Krishna Patra @ Gopalrusma v. Union of India***, Criminal Appeal No. 1169 of 2022, decided on 5.8.2022, ***Shariful Islam @ Sarif v. The State of West Bengal***, SLP (Crl.) No. 4173 of 2022, decided on 4.8.2022 and ***Nitish Adhikary @ Bapan v. The State of West Bengal***, SLP (Crl.) No. 5769 of 2022, decided on 1.8.2022.

Learned counsel for the State opposes the prayer for grant of bail. He relies upon Section 37 of the Act and submits that the petitioners were occupants of the vehicle from which 28 kgs. Ganja was recovered along with knife. He further submits that the allegations against the petitioners are serious that instead of stopping the vehicle attempt was made to run over the police officials. He on instructions further submits that the prosecution witnesses are police officials and an endeavor would be made to examine the prosecution witnesses within six months from the date fixed before the trial court.

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.

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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 in dispute that commercial quantity of contraband was recovered. The only ground pressed for seeking bail is the custody period.

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.

There is another aspect to be considered. There are serious allegations that there was an attempt by the petitioners to run over the police party. Moreover, there is no inordinate delay in trial. 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. The orders relied upon by learned counsel for the petitioners are of no avail in view of case law cited above where scope and ambit of Section 37 of the Act has been specifically dealt with.

The contention that the co-accused was granted bail by this court does not enhance the case of the petitioners. The co-accused was not apprehended at the spot, his name surfaced in the disclosure statement, whereas there is recovery of commercial quantity of contraband is from the petitioners.

No ground is made out for grant of bail.

The petitions are dismissed.

Photocopy of the order be placed on the file of connected case.

[AVNEESH JHINGAN]
JUDGE

19th January, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |