

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

CRM-M-58049-2022 (O&M)

Date of Decision: 30.05.2023

SONY ALIAS NIKKA

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Premjit Singh Hundal, Advocate
for the petitioner.

Mr. M.S. Tiwana, A.A.G., Punjab.

HARSH BUNGER, J. (ORAL)

Petitioner (Sony @ Nikka) has filed this petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.171 dated 09.07.2022 (Annexure P-1), under Section 22(b) [22(c) added later on after the receipt of Report of Chemical Examiner] of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), registered at Police Station Malout, District Sri Muktsar Sahib (Punjab).

2. Succinctly, the above-mentioned case FIR was registered on the complaint of ASI Shavinder Singh stating that while he alongwith fellow officials was riding in a private car in connection with patrolling and checking of suspicious persons and was present near Nagpal Dhaba on Malout-Bathinda GT Road, then a clean shaven boy while holding a transparent polythene envelope was checking it and the said boy was stopped on the basis of suspicion and tablets were clearly visible in the said

transparent polythene envelope, which seemed to be intoxicating tablets. Accordingly *ruqa* was prepared and sent to the police station alongwith request to send regular officer at the spot. Thereafter the Sub Inspector reached at the spot and after complying with the procedure, the identity of the boy was revealed as Soni @ Nikka (petitioner) and upon carrying out search of the transparent polythene envelope, the following intoxicating tablets were recovered:-

“06 strips [each containing 15/15 tablets], one strip [containing 10 tablets], total 100 tablets Marka Etizolam Tablets IP Etizola 0.5, bearing batch No. KEC2202A, MFG dt 03/2022 having Expiry Date as 02/2025”

During personal search of petitioner, Rs.11,000/- Indian currency notes were recovered from the front pocket of T-shirt of the petitioner. Accordingly, the abovesaid FIR was registered and the petitioner was arrested.

3. The petitioner thereafter applied for regular bail before the Additional Sessions Judge, Sri Muktsar Sahib; which was dismissed on 26.10.2022. 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.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the instant case. It is submitted that as per FIR, the petitioner is alleged to have been apprehended from outside Nagpal Dhaba, Malout-Bathinda GT Road in the month of July, 2022 i.e. on 09.07.2022 at 8.30 p.m., however the petitioner is suffering from a rare disease “Retinitis Pigmentosa”, which causes vision impairment and is incurable and a person suffering from this disease loses his vision during darkness (night), hence it is unlikely that the petitioner has committed the

offence. Learned counsel for the petitioner has also submitted that the petitioner is suffering from depression and the alleged recovered contraband is 'Etizolam' and is used for treatment of anxiety disorder, panic disorder and insomnia and in view of Rule 66 of the Narcotic Drugs Psychotropic Substances Rules, 1986 (here-in-after referred to as 'the NDPS Rules'), any person may possess a reasonable quantity thereof as may be necessary for its genuine scientific requirement or genuine medical requirements. Rule 66 of the NDPS Rules, provides as follows :-

66. Possession, etc., of psychotropic substances. —

(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these Rules.

*(2) Notwithstanding anything contained in sub-rule (1), any research institution or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person: **Provided** that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time:*

*[**Provided** further that an individual may possess the quantity of exceeding one hundred dosage units at a time for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.]*

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.”

It is next submitted that the petitioner is in custody since 09.07.2022; the investigation in this case is complete, challan stands presented and even charges have been framed, thus the trial is likely to take time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period. It is submitted that the petitioner applied for regular bail before the Court of learned Additional Sessions Judge, Sri Muktsar Sahib; however the same was wrongly dismissed vide order dated 26.10.2022. It is stated that the petitioner is not involved in any other case and he is ready to abide by any condition as may be imposed by this Court or by trial court, accordingly prayer for regular bail is made.

5. Per contra, learned State counsel has opposed the prayer of petitioner for grant of regular bail on the ground of seriousness of the offence. Learned State Counsel has submitted that the recovered contraband in this case falls under the category of “Commercial Quantity” and thus bar under Section 37 of NDPS Act is attracted. It is further submitted that in case the petitioner is extended the benefit of regular bail then there is likelihood that he may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, it is urged that the petitioner does not deserve the concession of regular bail and thus the instant petition may be dismissed.

6. I have heard learned counsel for the parties and perused the paper book as well as reply filed on behalf of respondent-State of Punjab.

7. In the present case, the petitioner was apprehended with the alleged contraband, which falls under the category of “Commercial

Quantity” and thus the rigors of Section 37 of NDPS Act are 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 [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.].”

8. Hon’ble the Apex Court in ***Union of India vs Rattan Mallik @ 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.

9. In the present case, there is nothing on record so as to enable this Court to record a *prima facie* satisfaction as required under Section 37 of the NDPS Act 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.

10. As regards the submission of the counsel for the petitioner that Rule 66 of the NDPS Rules permit a person to possess a psychotropic substance for his personal medical use provided the quantity thereof shall not exceed one hundred dosage units at a time; suffice it to say that a similar contention was considered by a co-ordinate Bench of this Court in *Sarbjit Singh alis Sabbi v. State of Punjab, 2018(5) RCR (Criminal) 883*, wherein it was held as under:

"17. Rule 65A of NDPS make a complete ban on the sale, purchase, consumption or use of psychotropic substance.

This rule reads as under : -

"65-A. Sale, purchase, consumption or use of psychotropic substances-- No person shall sell, purchase, consume or use any psychotropic substance except in accordance with the Drugs and Cosmetics Rules, 1945]

Provided that sale, purchase, consumption or use of a psychotropic substance specified in Schedule I shall be only for the purpose mentioned in Chapter VIIA]."

18. Further rule 66 also provides that if any psychotropic substance has been authorised under Drugs & Cosmetics Rules, 1945, even then, no person shall be possessed of any psychotropic substance for any purpose covered under Rule 45 of the aforesaid Rules unless lawfully

authorised to possess such substance for any of the said purpose. Rule 2 thereof takes some leniency with regard to drugs used for research and medical purpose. This provision reads as under:-

"66. Possession, etc., of psychotropic substances.-

[(1) No person shall possess any psychotropic substance for any of the purposes covered under 1945 rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these rules:

Provided that possession of a psychotropic substance specified in Schedule I shall be only for the purposes mentioned in chapter VIIA.]

(2) Notwithstanding anything contained in sub-rule (1), any research institution or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any Person who is not so authorised under the 1945 Rules, may Possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person;"

19. Further Rule 2 has been equipped with two provisos; the first authorises a person to possess up to 100 doses units at a time. This proviso reads as under : -

"Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time"

20. However, if the dose is for long term medical use, then it provides that it must be prescribed by a Registered Medical Practitioner. The 2nd proviso reads as under : -

Provided further that an individual may possess the quantity of exceeding one hundred dosage units at a time [but no exceeding three hundred dosage units at a time] for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.]

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession."

21. Learned counsel for the petitioner has argued that if the quantity of the dose in scheduled psychotropic substances comes up to 100 unit, then there is no need of any medical prescription. He went to extent of saying that it shall be presumed that the same was used for personal medical use of the petitioner.

22. This Court has considered the above submission but same carries no weight.

23. If this argument of learned counsel for the petitioner is admitted to be correct, for sake of arguments, then every individual will have liberty to keep with him 100 ampoules of all the 111 psychotropic substances as shown in the schedule attached with the Act. The synthetic/manufactured drugs such like buprenorphine - have created a havoc with the youth of the country. Even registration of numerous cases under the Act against the consumers, carriers and couriers have made little impact. This proviso had encouraged such nefarious persons to spoil the innocent minds. Hundred doses of buprenorphine as well as that of remaining 110 scheduled substances liberally authorises their mishandling and misuse. It is the need of time that

appropriate amendment be made to curb the easy supply of the psychotropic substances under the garb of sub Rule 2 of Rule 66 of the Rules.

24. The first proviso is silent with regard to the fact if such a person has to possess any medical prescription for carrying 100 doses of the scheduled psychotropic substances. This provision is absurd to this extent and in contradiction with object of the Act. The object of the Act is to completely curb and put a ban on the use, consumption, sale, purchase and possession of the psychotropic substances and narcotics. In the case in hand, recovery of psychotropic substance falls within the ambit of commercial quantity, therefore, the provisions of Section 37 of the Act are applicable. This provision does not exempt any of the provisions of the Act or Rules, rather it imposes blanket ban on the possession of the psychotropic substance...”

Keeping in view the above and also the fact that the alleged recovered contraband in this case falls under the category of “*commercial quantity*”, petitioner cannot derive any benefit of Rule 66 of NDPS Rules.

11. Furthermore, 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. Furthermore, there is every possibility that the petitioner may take path of crime again, in case, he is enlarged on bail.

12. In view of the above, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Sony @ Nikka) in case

FIR No. 171 dated 09.07.2022 (Annexure P-1), under Section 22(b) [22(c)

added later on, after the receipt of Report of Chemical Examiner] of the NDPS Act, registered at Police Station Malout, District Sri Muktsar Sahib Punjab; is dismissed.

13. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

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

May 30th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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