

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

**CRM-M No. 1745 of 2024 (O&M)
Date of Decision: 24.09.2024**

Rajesh Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

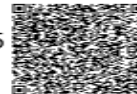
Present:- Mr. B.S. Makkar, Advocate
for the petitioner.

Mr. Brijesh, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for seeking bail pending trial to the petitioner in FIR No.72 dated 23.05.2020, under Sections 21, 22, 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station, Mehal Kalan, District Barnala.

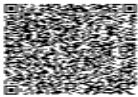
(2) Above FIR was registered on the basis of secret information received on 23.05.2020 at 09:30 PM by police with the allegation that Lovepreet Singh @ Lovy s/o Ajmer Singh; Ravinder Singh @ Binda s/o Nachhattar Singh, residents of Divana; Satvir Singh @ Satti s/o Gurmeet



Singh, r/o Chhiniwal Khurd; Balwinder Singh @ Nikka s/o Gurjant Singh, r/o Bakhatgarh and Ravi, r/o Chakkar, in connivance with each other, have formed a racket; engaged in procuring intoxicant tablets & narcotic substance from outside the State and supplying the same in Tallewal, Mehal Kalan and nearby villages to the persons who are involved in such like activities. Also alleged that all of them were seen roaming in Verna Car bearing registration No.PB-11-AY-1700 (white colour) around Mehal Kalan Town and they are likely to supply the same in Mehal Kalan Town and nearby areas. If a raid is conducted, all of them can be nabbed along with contraband. The information was found to be credible and as a result thereof, the above FIR was registered.

(3) It is contended by learned Counsel for the petitioner that he was not named in the FIR; rather nominated on the basis of disclosure made by co-accused Narinder Khanna and apart that, there is no other material regarding his complicity; hence, no offence is made out against him. Also contended that false recovery has been implanted upon the petitioner and intoxicant tablets and capsules were alleged to be recovered from the premises which does not belong to the petitioner. Further contended that petitioner is in custody since 20.07.2020; there are total 160 prosecution witnesses and out of them, about 50 are yet to be examined, thus, trial is likely to take sufficient long time.

(4) On the other hand, learned State Counsel, while opposing the prayer, submits that petitioner is actively involved in supply of illegal drugs in connivance with other co-accused; hence, his complicity is well apparent in the present case. Also submits that all the accused are running a big racket and there is huge recovery of intoxicant tablets & capsules apart from drug money



as well as six Cars and more than 15 Kg. of broken loose intoxicant tablets. Further submits that all the accused have been charged under the NDPS Act as well as IPC for using false & fabricated bills while transporting the contraband. Again submits that petitioner has been specifically charged under Sections 22 & 29 of the NDPS Act as well as Sections 467, 468, 471 & 120-B IPC and earlier also, he approached this Court vide CRM-M-24747-2021 seeking bail pending trial, which was dismissed as withdrawn on 10.11.2021.

- (5) Heard learned Counsel for the parties and perused the paper-book.
- (6) There is no dispute that petitioner was not named in the FIR; rather has been nominated on the basis of disclosure made by co-accused Narinder Khanna.

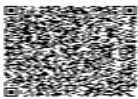
Records reveal that huge quantity of contraband was recovered from the Verna Car on 23.05.2020.

During investigation, some other accused were also found to be involved in the racket and that led to recovery of more contraband at their instance.

On 26.05.2020, one Zulfikar Ali @ Zulfi was nominated as an accused and after his arrest on 29.05.2020, recovery of 12,000 tablets of Clovidol (Tramadol Hydrochloride) was effected from him.

Later on, above Zulfikar Ali disclosed the name of four other accused i.e. Bittu Ram, Aman Singla, Manpreet Singh & Firozdeen and from them following contraband was allegedly recovered:-

Sr. No.	Name of the accused	Recovery
1.	Bittu Ram	10,500 Tablets of Clovidol (Tramadol Hydrochloride)
2.	Aman Singla	



3.	Manpreet Singh	5000 Tablets of Clovidol (Tramadol Hydrochloride)
4.	Firozdeen	Registered owner of Verna Car, which has been recovered

Further discernible that during investigation, name of one Harish Bhatia @ Raju Sachdeva surfaced and 57,600 intoxicant capsules, Mark Sinphlex C+ (Tramadol Hydrochloride, Dicyclomine Hydrochloride, Chlorpheniramine Maleate & 40,000 intoxicant capsules, Mark Pervorin Spas (Tramadol Hydrochloride, Dicyclomine Hydrochloride, Chlorpheniramine Maleate, Diclofenac Sodium) were recovered from him on 15.07.2020.

Still more contraband i.e. 20,000 intoxicant tablets, Mark Clovidol (Tramadol Hydrochloride) as well as drug money of Rs.85,000/- were recovered from Harish Bhatia @ Raju Sachdeva.

On the basis of disclosure made by Narinder Khanna, present petitioner was nominated as an accused and upon his arrest on 18.07.2020, recovery of 50,000 tablets Clovidol (Tramadol Hydrochloride) was allegedly effected.

Thus, in such a scenario, it is wrong to contend on behalf of the petitioner that there is no material regarding his complicity; rather *prima facie*, his involvement is apparent.

(7) As on today, all 21 accused have been charge-sheeted under Sections 22 & 29 of the NDPS Act along with offences punishable under Sections 467, 468, 471 & 120-B IPC for possessing illicit drugs as well as fabrication of bills for sale & purchase of the same and petitioner is one of them.



(8) Here it is also relevant to recapitulate the provisions of Section 37 of the NDPS Act and which read as under:-

Section 37 of the NDPS Act – 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.”

Aforesaid Section is in the nature of non-obstante clause to Cr.P.C. including Section 439 thereof and which, *inter alia*, lays down that no person accused of an offence involving commercial quantity shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and not likely to commit any offence while on bail.

Both the above conditions are cumulative and not alternative. The law is well settled that requirement of satisfaction in terms of Section 37 (1)(b)

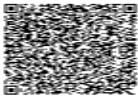


(ii) (*ibid*) regarding the accused being not guilty is to be recorded on the basis of reasonable grounds and that should be more than *prima facie*.

(9) The twin-test stipulated under Section 37 of the NDPS Act has been considered by Hon'ble the Supreme Court in '***Union of India Versus Rattan Malik Alias Habul***', (2009) 2 SCC 624 and para Nos.12 & 13 of the same being relevant read as under:-

"12. It is plain from a bare reading of the non-obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act."



(10) Also noteworthy that petitioner has mentioned the present petition as first petition for seeking bail pending trial; but infact, earlier also he filed similar petition bearing No.CRM-M-24747-2021 which was dismissed as withdrawn vide order dated 10.11.2021 (P-5).

(11) Apart that, there is no dispute that prosecution has already examined 58 PWs and 52 PWs have been given up; thus, trial is going on at normal pace.

(12) As the recovery alleged against the petitioner is heavy and commercial in nature; he has already been charge-sheeted; therefore, this Court is not inclined to record the twin-test satisfaction in his favour as per Section 37 (1)(b)(ii) (*ibid*).

(13) In view of the above, there is no option except to dismiss the petition ‘at this stage’.

(14) Ordered accordingly.

(15) The above observations be not construed as an expression of opinion on merits of the present case in any manner.

Pending application(s), if any, shall also stand disposed off.

24.09.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No