

213-2

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

CRM-M-2693-2024 (O&M)

Date of decision : 04.04.2024

Ahmad Hussain

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Niraj Sinhmar, Advocate,
and Ms. Sunita Shekhawat, Advocate,
for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

MAHABIR SINGH SINDHU, J.

Present third petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial to the petitioner in FIR No.581 dated 23.09.2019, under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short, 'the NDPS Act') registered at Police Station City Jind, District Jind.

2. Allegations are that 01 kg. 900 gms. Heroin (Smack) and 634 grams Heroin (*Chitta*) were recovered from the petitioner.

3. Contends that petitioner has been falsely implicated in the present case. He is in custody since 23.09.2019; after submission of final report under Section 173 Cr.P.C., charges have already been framed and prosecution evidence is going on; therefore, no useful purpose would be served in further incarcerating the petitioner. Also contends that petitioner is not involved in any other criminal case.

2278239; and ***Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh***, SLP (Crl.) No.6690/2022, decided on 25.01.2023.

4. *Per contra*, learned State counsel, while opposing the prayer, on instructions, submits that after conclusion of investigation, final report under Section 173 Cr.P.C. was submitted on 21.12.2019; charges have already been framed on 24.02.2021 against the petitioner as well as co-accused; and out of total 21 prosecution witnesses, 10 already stand examined. Again contended that recovery alleged against the petitioner is commercial in nature; therefore, he does not deserve the concession of bail in view of the embargo under Section 37 of the NDPS Act.

5. Heard learned counsel for the parties and perused the paper-book.

6. Before proceeding further, it would be relevant to reproduce the provisions of Section 37 of the NDPS Act and the same 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.”

7. 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.

8. 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 was 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 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. As per the case of prosecution, petitioner was found in possession of 01 kg. 900 gms. Heroin (Smack) and 634 grams Heroin (*Chitta*) without any valid permit or licence, which is commercial in nature. Petitioner has already been charged under Sections 21(c) & 29 of the NDPS Act; therefore, this Court is not inclined to record its twin-test satisfaction in his favour as per Section 37 (1)(b)(ii) (*ibid*).

11. So far as legal precedents cited by learned counsel for the petitioner are concerned, the same are not helpful for the following reasons:-

- (i) In Rabi Prakash's case (*supra*), petitioner was in custody for more than 3 ½ years, but out of 19 witnesses, only 01 had been examined.

(ii) Similarly, in Dheeraj Kumar Shukla’s case (supra), petitioner was in custody for 2 ½ years and only charges were framed, but trial was yet to commence.

However, in the present case, trial is going on smoothly as out of total 21 prosecution witnesses, 10 have already been examined. Apart that, this Court has taken a view not to record the twin-test satisfaction in favour of the petitioner for the reasons explained above.

12. In view of the above, there is no option except to dismiss the present petition at this stage.

13. Ordered accordingly.

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

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

04.04.2024
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

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