

225 (2nd case)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.5182 of 2022 (O&M)
Date of Decision: 29.01.2024

Jatinder Kumar Arora

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. P.S.Ahluwalia & Mr. Sonpreet S. Brar, Advocates
for the petitioner.

Mr. M.S.Tiwana, A.A.G., Punjab for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for seeking bail pending trial 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'*) and Sections 467, 468, 471 & 120-B of the Indian Penal Code, 1860 (*for short 'IPC'*), 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 the police party to the effect 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 at 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 a 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 Harish Bhatia @ Raju Sachdeva and apart that, there is no other material regarding his complicity; hence, no offence is made out against him. Also contended that father of petitioner is having a valid license issued by the competent authority for running the Chemist Shop; the entire drugs, recovered from the petitioner, were purchased against proper bills; but the police completely ignored the material at the time of alleged recovery; hence, the entire prosecution case is vitiated. Further contended that petitioner is in custody since 25.07.2020 and there are more than 100 prosecution witnesses; 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 deeply 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. broken loose intoxicant tablets. Further submits that at the time of recovery, no license or permit was produced by the petitioner before the police party. Again submits that 10 mobile phones were also recovered from the petitioner, which he was using for running all these illegal activities. Further submits that all the 21 accused have been charged under the NDPS Act as well as IPC for using the 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. Lastly submits that after registration of the present FIR, petitioner is found involved in another case bearing FIR No.344 dated 13.07.2020, under Sections 22(c), 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 7, 13 of the Prevention of Corruption (Amended) Act, 2018; Sections 465, 467, 468, 471 & 120-B of the Indian Penal Code, 1860, Police Station City Barnala, District Barnala.

(5) Learned State Counsel has also supplied the copy of Charge-Sheet dated 15.10.2022, framing charges against 21 accused in the present case, for perusal of this Court and which is taken on record as Mark 'X'

(6) Heard learned Counsel for the parties and perused the paper-book.

(7) 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 Harish Bhatia @ Raju Sachdeva.

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 drug 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 more 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 also, huge contraband was recovered and which is as under:-

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 also surfaced and 57,600 intoxicant capsules, marka Sinphlex C+ (Tramadol Hydrochloride, Dicyclomine Hydrochloride, Chlorpheniramine Maleate & 40,000 intoxicant capsules, marka 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, marka Clovidol (Tramadol Hydrochloride) as well as drug money Rs.85,000/- were recovered from Harish Bhatia @ Raju Sachdeva.

On the basis of disclosure made by above Harish Bhatia @ Raju Sachdeva, present petitioner was nominated and upon his arrest on 25.07.2020, recovery of following contraband is alleged to have been effected from him:-

Sr. No.	Date	Recovery
1.	28.07.2020	34,992 capsules, containing salt Tramadol Hydrochloride, Dicyclomine Hydrochloride, Chlorpheniramine Maleate
2.	28.07.2020	17,250 tablets, containing salt Tramadol Hydrochloride, Acetaminophen
3.	28.07.2020	18,000 tablets, containing salt Tramadol Hydrochloride
4.	28.07.2020	51,750 tablets, containing salt Alprazolam
5.	05.08.2020	12,000 loose white colour intoxicant tablets, containing salt Tramadol Hydrochloride along with 10 mobile phones

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

(8) As on today, 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. For reference, the relevant part of charge-sheet dated 15.10.2022 is extracted as under:-

14. That 28.07.2020 from Krishna Agency F-19A Professor Colony, Kamla Nagar, Agra, you accused Jatinder Kumar Arora was found in conscious possession of 2 parcels with 243 boxes, with 18 strips each, each strip having 8 capsules, total 34,992

capsules marka SPASORIDPROXIVON Batch no:- SPA 2001, Mfg April 2020, exp March 2022 containing salt Tramadol Hydrochloride, Dicyclomine Hydrochloride, Chlorpheniramine Maleate, all are manufactured by Ridley Life Science Private Limited New Delhi without any valid permit or license and thereby you above said accused committed an offence punishable u/s 22 NDPS Act within the cognizance of this Court.

14-A That 28.07.2020 from Krishna Agency F-19A Professor Colony, Kamla Nagar, Agra, you accused Jatinder Kumar Arora was found in conscious possession of 2 parcels with 115 boxes, with 10 strips each, each strip having 15 tablets, total 17,250 tablets marka ULTRAFIT Batch no:- ULT1903, Mfg Sep 2019, exp Aug 2022 containing salt Tramadol Hydrochloride, Acetaminophen, all are manufactured by Ridley Life Science Private Limited New Delhi without any valid permit or license and thereby you above said accused committed an offence punishable u/s 22 NDPS Act within the cognizance of this Court.

14-B That 28.07.2020 from Krishna Agency F-19A Professor Colony, Kamla Nagar, Agra, you accused Jatinder Kumar Arora was found in conscious possession of 90 boxes, with 20 strips each, each strip having 10 tablets, total 18,000 tablets marka TRICORE-SR Batch no:- TRI 1907, Mfg Feb 2020, exp Jan 2022 containing salt Tramadol Hydrochloride, all are manufactured by Ridley Life Science Private Limited New Delhi without any valid permit or license and thereby you above said accused committed an offence punishable u/s 22 NDPS Act within the cognizance of this Court.

14-C That 28.07.2020 from Krishna Agency F-19A Professor Colony, Kamla Nagar, Agra, you accused Jatinder Kumar Arora was found in conscious possession of 69 boxes, with 50 strips each, each strip having 15 tablets, total 51,750 tablets marka ALTIS-0.5 Batch no:- ALT 1905, Mfg March 2020, exp Feb 2023 containing salt Alprazolam, all are manufactured by

Ridley Life Science Private Limited New Delhi without any valid permit or license and thereby you above said accused committed an offence punishable u/s 22 NDPS Act within the cognizance of this Court.

14-D *That 05.08.2020 from your residential house F533, Kamla Nagar, Agra, you accused Jatinder Kumar Arora was found in conscious possession of **12,000 loose white colour intoxicant tablets** containing salt Tramadol Hydrochloride, all are manufactured by Ridley Life Science Private Limited New Delhi without any valid permit or license and thereby you above said accused committed an offence punishable u/s 22 NDPS Act within the cognizance of this Court.*

65. *That prior to 23.05.2020, you all accused in party to the criminal conspiracy with each other to commit an offence of illicit trafficking of intoxicant tablets and thereby you all accused had committed an offence punishable under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and within my cognizance of this court.”*

(9) Here it is also 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.”

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*.

(10) 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."

(11) It is not in dispute that prosecution has already examined more than 40 witnesses and about 30 PWs have been given up.

(12) Also not in dispute that petitioner is facing another case bearing FIR No.344 dated 13.07.2020, under Sections 22(c), 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 7, 13 of the Prevention of Corruption (Amended) Act, 2018; Sections 465, 467, 468, 471, 120-B of the Indian Penal Code, 1860, registered at Police Station City Barnala, District Barnala.

(13) As the recovery alleged against the petitioner is too 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*).

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

(15) Ordered accordingly.

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

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

29th January, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes