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

**CRM-M-8611-2024 (O&M)
Date of decision : 13.05.2024**

Harpreet Kaur

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Gagandeep Singh Simble, Advocate,
for the petitioner.

Mr. Neeraj Madaan, Sr.DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail pending trial to the petitioner in FIR No.82 dated 09.07.2022 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), registered at Police Station Bhogpur, Police District Jalandhar Rural, District Jalandhar, Punjab.

2. Allegations are that 260 grams of Heroin was recovered from the petitioner.

3. Custody certificate of petitioner produced by learned State counsel is taken on record.

4. Contends that petitioner is in custody since 09.07.2022 and there is no progress of the trial. Also contends that even the seizure made by prosecution was completely illegal. Again contended that



there is a breach of Section 100 Cr.P.C. while conducting the search of petitioner.

5. *Per contra*, learned State counsel submits that recovery alleged against the petitioner is commercial in nature and she is facing 05 more cases under the NDPS Act, including 02 convictions to her credit.

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

7. 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.”

8. 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/she is not guilty of such an offence and not likely to commit any offence while on bail.

9. 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 recovery alleged against the petitioner is commercial in nature. Also matter of record that petitioner is involved in 05 more cases under the NDPS Act and previous conviction in 02 cases.

12. Although a contention is raised that entire incident was video-graphed by the media, but all these pleas, including alleged breach of Section 100 of Cr.P.C., would be matter of trial. Hence, the same cannot be considered at this stage, particularly when the charges have already been framed by learned Special court on 29.03.2023 and trial is going on.

13. In view of the above, there is no option except to dismiss the petition.

14. Ordered accordingly.

15. Above observations be not construed as an expression of opinion on merits of case, in any manner.

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

13.05.2024
atulsethi/v

(MAHABIR SINGH SINDHU)
JUDGE

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