

213-1

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

CRM-M-10012-2020 (O&M)

Date of decision : 04.04.2024

Dilbag @ Bhagi

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. D.S. Virk, Advocate,
for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

MAHABIR SINGH SINDHU, J.

Present 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 co-accused Ahmad Hussain, which were to be delivered to the petitioner.

3. Contends that petitioner is not named in the FIR; rather nominated on the basis of disclosure made by co-accused-Ahmad Hussain, with whom he has no relation whatsoever. Further contended that no recovery of contraband was effected from the petitioner and he was granted interim bail by this Court on 18.07.2023 and never misused the concession till date.

4. *Per contra*, learned State counsel, while opposing the prayer, submits that charges have already been framed against the petitioner under Section 29 of the NDPS Act. Also submitted that petitioner is involved in various criminal cases, including one conviction under the NDPS Act; therefore, he does not deserve the concession of bail.

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. It is not in dispute that after completion of investigation, final report under Section 173 Cr.P.C. was presented on 21.12.2019; charges were framed on 24.02.2021; and out of total 21 prosecution witnesses, 10 have already been examined.

11. The recovery alleged in the present case is commercial in nature; and petitioner has already been charged under Section 29 of the NDPS Act; therefore, this Court is not inclined to record the twin-test satisfaction in his favour as per Section 37 (1)(b)(ii) (*ibid*). Apart that, petitioner is involved in various criminal cases and which are as under:-

Sr. No.	FIR No.	Dated	U/s	Name of Police Station	Status
1.	91	23.02.1997	307, 353, 186, 147, 148 IPC	Narnaund	Convicted and sentenced to undergo two years imprisonment with fine of Rs.500/- by the Ld. Court of ASJ, Hisar
2.	272	18.11.2000	61 of the Excise Act, 1914	Narnaund	On 13.12.2008 fine of Rs.500/- imposed by the learned Court of JMIC, Hansi
3.	197	08.07.2004	61 of the Excise Act, 1914	Narnaund	Convicted on 13.07.2004 and fine of Rs.1500/- imposed by DETC, Hisar
4.	376	22.10.2008	61 of the Excise Act, 2014	Narnaund	Convicted on 23.10.2008 and fine of Rs.1050/- imposed by DETC, Hisar
5.	347	11.11.2010	21 of NDPS Act	Sadar Jind	Convicted vide order dated 19.12.2014 passed by ASJ Jind and sentenced to undergo 10 years imprisonment along with fine amounting to Rs.10 Lacs.

6.	271	22.11.2012	174-A IPC	Sadar Jind	Convicted on 13.02.2013 by the Ld. Court of JMIC, Jind and sentenced to the period already undergone.
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12. In view of the above, there is no option except to dismiss the 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. Needless to say that the interim concession granted to the petitioner on 18.07.2023, extended subsequently, shall come to an end, automatically.
16. 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