

133

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

CRM-M-13175-2024 (O&M)

Date of decision : 20.03.2024

Angrej Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Anuj Thakur, Advocate for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure (for short 'Cr.P.C') for grant of bail pending trial to the petitioner in FIR No.220 dated 25.07.2023, under Sections 18(c), 25 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short, 'NDPS Act') registered at Police Station, STF Wing, Amritsar.

2. Allegations are that 5 Kg. *opium* was recovered from the conscious possession of the petitioner on 25.07.2023.

3. Learned counsel for the petitioner have made two fold submissions: (i) that a period of 180 days has already lapsed, but challan is not presented till date, thus, petitioner is entitled for default bail under Section 167(2) Cr.P.C.; (ii) petitioner is in custody for the last about 8 months and trial is likely to take sufficient long time, thus, further incarceration would not serve any purpose.

4. *Per contra*, learned State counsel while opposing the prayer, on instructions from ASI-Manpreet Singh, submitted that report under Section 173 Cr.P.C. has already been presented on 19.01.2024 and matter is pending for consideration of charges on 09.04.2024 before learned Special Court. He also opposed the prayer on the premise that recovery is commercial in nature, thus, in view of the provisions of Section 37 of NDPS Act, petitioner is not entitled for bail pending trial.

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 allegations of the prosecution, 5 kg. *opium* was recovered from the conscious possession of petitioner. As noticed above, report under Section 173 Cr.P.C. has already been presented, thus, argument for default bail is not acceptable; hence, the same is rejected. So far as the contention of petitioner that he is in custody for the last about 08 months, would also be not helpful for the reason that recovery is commercial in nature and as such, this Court is not inclined to record its satisfaction in favour of the petitioner that there are reasonable grounds for believing that petitioner is not guilty of the alleged offence. In view of the above, there is no option except to dismiss the petition at this stage.

11. Ordered accordingly.

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

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

20.03.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

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