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

CRM-M-14115-2022 (O&M)

Date of decision : 14.02.2024

Swaran Singh @ Sonu

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Lekh Raj Sharma, Advocate,
for Mr. Parvesh Sachdeva, Advocate,
for the petitioner.

Ms. Avneet, AAG, Punjab.

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.4 dated 20.01.2022, under Section 22 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short, 'the NDPS Act') registered at Police Station, Amir Khas, District Fazilka.

2. Above FIR was registered at the instance of ASI Sukhdev Singh alleging that on 20.01.2022, he along with other police officials was present in the area of Village Amir Khas and going towards hamlet Bhandarian Wali Basti. When the police party reached near H.B. brick kiln, petitioner was seen coming from the opposite side, holding a white polythene bag in his hand. On seeing the police party, petitioner

became perplexed and after throwing the bag tried to run away from the

spot. On suspicion, petitioner was apprehended and after checking the polythene bag, 223 strips (each containing 10 tablets) of Corlividol 100 SR were recovered.

3. It is contended by learned counsel that petitioner has been falsely implicated in the present case. Further contends that before conducting search of petitioner, no offer was given; nor any Gazetted Officer or Magistrate was joined during the alleged recovery. Also contends that no independent witness was associated; hence there is complete violation of the Section 50 of NDPS Act. Again contended that petitioner is in custody since 20.01.2022 and trial is likely to take sufficient long time; therefore, no useful purpose would be served while keeping him in custody. Cites ***Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) (SC), 2023 AIR (SC) 1648.***

4. *Per contra*, learned State counsel while opposing the prayer, submitted that contraband recovered from the petitioner is commercial in nature and was apprehended on the spot leading to the recovery of 2230 tablets of Corlividol 100-SR [containing Tramadol Hydrochloride @ 98.20 mg/tablet as per FSL report dated 22.03.2022 (R-1)].

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

“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 19.04.2022; charges were framed on 26.04.2022; and trial is going on. Although, learned counsel has cited a judicial precedent, but the same is of no help to the petitioner for the reason that there is no undue delay in trial.

11. Concededly, petitioner was charged under Section 22 of the NDPS Act on 26.04.2022 by learned Judge, Special Court, Fazilka and for reference, relevant part of the charge-sheet reads as under:-

“On 20.01.2022 at about 12:55 PM in the area of HC Brick Kiln, Amir Khas, falling under the jurisdiction of Amir Khas, you above named accused was found in conscious possession of 223

strips each strip containing 10 tablets i.e. total 2230 tablets make Corlividol-100SR having batch No. 145 containing Tramadol Hydrochloride salt without any valid licence or permit and thereby you accused have committed an offence punishable under Section 22 of the N.D.P.S. Act and within cognizance of this Court.

And I hereby direct that you be tried by this Court on the aforesaid charge.”

Since recovery alleged against the petitioner is commercial in nature; he has already been charged under Section 22 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*).

12. As far as the argument regarding non-compliance of Section 50 of the NDPS Act is concerned, the same shall be considered by learned trial Court at appropriate stage(s).

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

14. Ordered accordingly.

15. However, keeping in view the custody of petitioner, learned trial Court is requested to proceed in the matter expeditiously.

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.

14.02.2024
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :
Whether Reportable :

Yes	No
Yes	No