

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.29891 of 2021 (O&M)
Date of Decision: 29.01.2024

Satgur Singh
..... Petitioner
Versus
State of Haryana
..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sudhir Rana, Advocate for
Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana for the respondent.

MAHABIR SINGH SINDHU, J.

Present 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.200 dated 16.05.2021, under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*); Section 269 of the Indian Penal Code, 1860 (*for short 'IPC'*) and Section 51-B of the Disaster Management Act, 2005 (*for short '2005 Act'*), registered at Police Station, City Tohana, District Fatehabad.

(2) As per prosecution case, petitioner was found in possession of 2000 Tramadol Hydrochloride 100 Mg. Clovidol-100 SR Tablets, weighing 1 Kg. 330 grams, without having any valid licence.

(3) Contends that petitioner is in custody since 16.05.2021 and there is no other similar case pending against him. Also contends that out of total 17 prosecution witnesses, only 07 have been examined till date. Further contends petitioner has been falsely implicated in the present case.

(4) On the other hand, learned State Counsel, on instructions from the police official concerned, opposed the prayer and submitted that recovery effected from the petitioner is commercial in nature, thus, 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 is relevant to extract 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, which is in the nature of non-obstante clause to Cr.P.C. including Section 439 thereof, *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) Also necessary to mention here that 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) Concededly, charges have already been framed against the petitioner and prosecution evidence is going on; therefore, this Court is not inclined to record the twin-test satisfaction in his favour as per Section 37 (1)(b)(ii) (*ibid*).

(11) Although, learned Counsel for the petitioner has relied upon various judicial precedents; but those are not helpful for the simple reason that this Court has already shown its inability to record the twin-test satisfaction in favour of the petitioner in terms of Section 37 (1)(b)(ii) (*supra*).

(12) Above all, the alleged contraband in this case was recovered in the presence of a Gazetted Officer i.e. Sh. Mukesh Kumar, Block Education Officer, Tohana, who apparently appears to be an independent person.

(13) No doubt, petitioner is in custody for the last more than 02 years and trial is likely to take sufficient time for its final conclusion; but that would not be the sole ground for granting bail pending trial in the present case.

(14) In view of the above, this Court has 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 case.
- (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