



CRM-M No. 25170-2024 (O&M) 1

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

208 (1)

CRM-M No. 25170-2024 (O&M)

Date of Decision: 25.11.2024

Gagandeep Kumar alias Bhundi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**Present:** Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. J.S. Gill, Addl. A.G., Punjab.

MAHABIR SINGH SINDHU, J.

Present second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for grant of bail pending trial to the petitioner in FIR No.29 dated 26.03.2023, registered under Sections 21, 23, 27(A), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'), Section 66 (F) Information Technology Act, 2000 and Section 25 of Arms Act, 1959 at Police Station Kalanaur, District Gurdaspur.

2. Allegations are that petitioner along with other co-accused being part of a racket, indulged in smuggling of intoxicants, illegal arms and weapons from Pakistan border through drones and for selling the same in India.

3. Affidavit dated 24.11.2024 of Mr. Dayama Harish Kumar Om Parkash, IPS, Senior Superintendent of Police, District Gurdaspur on behalf of respondent has been filed and the same is taken on record. Copy supplied

on the other side. Registry to tag the same at appropriate place.



4. Contends that petitioner was not named in the FIR; rather nominated on the basis of disclosure made by co-accused. Further contends that no contraband was recovered from the petitioner; rather only an amount of Rs.17,000/- has allegedly been recovered from him. Also contends that above amount was kept by the petitioner to buy fertilizers for his crops and as such the same cannot be said to be drug money.

5. *Per contra*, learned State counsel opposed the prayer while submitting that petitioner along with other co-accused used to bring heroin, smuggle illegal weapons from Pakistan through drone and to supply the same in border area. Again submits that apart from drug money of Rs. 17,000/-, other incriminating material, i.e. Pistols along with cartridges were recovered from the petitioner. Further submits that petitioner is having criminal antecedents and he is facing one more case under NDPS Act. Thus, in case granted bail, there is every likelihood that he shall influence the witnesses and hamper the trial.

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

7. Allegations are that petitioner along with other co-accused was involved in illicit trafficking of drugs, arms and ammunitions after procuring the same from Pakistan with the help of drone. Apart that, during investigation, recovery of 07 pistols i.e. 2 Glocks, 4 pistols of .30 bore and one pistol of .32 bore, 7 magazines, 77 cartridges and drug money of Rs. 35,70,000/- were effected from the petitioner and his co-accused. Also noteworthy that petitioner has criminal antecedents and he is involved in criminal case bearing FIR No. 15 dated 16.04.2023 under Section 21(c) of



likelihood that once released on bail, he may again indulge in such activities.

8. Moreover, finding a *prima facie* case, charges against the petitioner have already been framed by learned Special Court on 09.09.2024 and the relevant part of the chargesheet is extracted herein below:-

“First, that on or before 26.03.2023 in the area of P.S. Kalanaur at International Border you all above named accused along with your other co-accused Jagga son of Billa (yet to be arrested) imported the contraband/narcotic drugs from across the border illegally and thereby you all accused committed an offence punishable under Section 23 of NDPS Act and within the cognizance of this Court.

Secondly, that on or before 26.03.2023, you all above named accused along with your other co-accused Jagga son of Billa (yet to be arrested) indulged in illegal activities and conspired to smuggle narcotics from Pakistan to India and thereby you all accused committed an offence punishable under Section 29 of NDPS Act and within the cognizance of this Court.”

9. At this stage, 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.”

10. Aforesaid Section, is in the nature of non-obstante clause and which, *inter alia*, lays down that no person accused of an offence punishable under Section 27A of NDPS Act, 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.

11. 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*.

12. Although, petitioner was not named in the FIR; but during investigation, it surfaced that he is a part of racket and was nominated as an accused in the present case.

13. It is not in dispute that an FIR No. 15 dated 16.04.2023 registered under Section 21(c) NDPS Act, at Police Station Dorangla, District Gurdaspur is pending against the petitioner, thus, his credentials cannot be said to be clean.

14. In view of the above, this Court is not inclined to record the twin test satisfaction in favour of the petitioner as per Section 37 of the NDPS Act.



ruined the State of Punjab and which needs to be dealt with sternly. Hon'ble the Supreme Court in **Parwinder Singh @ Parminder Kumar @ Vicky Vs. State of Punjab**, SLP (Crl.) 12601-2023, decided on 14.12.2023, has held as under:-

“5. Having heard learned counsel for the parties, we are of the considered view that the parameters of granting bail in a case under special statutes like NDPS Act may not be liberally construed in the instant case. We say so taking notice of the fact that the State of Punjab is reeling under the grip of drug menace. There are several drug lords whose roots are identifiable in the State of Punjab, and who operate in the cross-border drug racketing and organized trafficking of narcotic drugs and psychotropic substances. It is a matter of common knowledge that huge cache of illicit drugs is smuggled across the border. Some local Pharmaceutical Industries, State police officials and other affluent people have been suspected to be involved, at occasions, in international drug trafficking. The drug addiction has posed a serious threat to the once vibrant state of Punjab. The Courts, therefore, ought to be highly circumspect while granting bail, especially to a repeat offender.”

- 16. In view of above and seriousness of the allegations against the petitioner, there is no option, except to dismiss the petition, at this stage.
- 17. Ordered accordingly.
- 18. Above observations be not construed as an expression of opinion on merits of the present case, in any manner.

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

25.11.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No