



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

209 (1)

CRM-M No. 25771-2024 (O&M)
Date of Decision: 12.12.2024

Tanvir Ahmed @ Ena

.....Petitioner

Versus

State of Punjab

.....Respondent

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

Mr. Puru Jarewal, AAG, 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.0208 dated 07.10.2022, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of NDPS Act added later on), registered at Police Station City-1, Malerkotla, District Malerkotla.

2. Allegations are that petitioner has been indulging in sale, purchase & supply of narcotic drugs and 65 strips containing 650 tablets of Etezola (salt Etizolam) and 37 strips containing 370 tablets of Alprasafe (salt Alprazolam) were recovered from him.

3. Status report dated 11.12.2024 by way of affidavit of Mr. Kuldeep Singh (PPS), Deputy Superintendent of Police, Sub Division, Malerkotla, District Malerkotla has been filed on behalf of respondent, which is taken on record. Copy supplied to the other side. Registry to tag the

same at appropriate place.



4. Contends that although recovery of 1020 tablets of intoxicant tablets was effected from petitioner, but all the recovered tablets were not sent for chemical examination and it can not be presumed that salt contained in the tablets sent for chemical examination, is also present in other tablets. Further contends that there is complete violation of Section 50 of NDPS Act as no offer was given to petitioner before conducting his search. Also contends that no Gazetted Officer or Magistrate was called at the spot. Again contends that there is also non-compliance of Section 42 of NDPS Act as written copy of secret information was not sent to senior police officers. Lastly contends that petitioner is in custody for more than 02 years and he has spent considerable time period in custody. Learned counsel for petitioner has placed reliance on judgment dated 30.08.2022 *titled as 'Kewal Singh Vs. State of Punjab'* in CRM-M-202 of 2020 and judgment dated 27.03.2023 *titled as 'Rampal Singh Vs. State of Punjab'* passed in CRM-M-8339-2023', passed by Coordinate Bench(es) of this Court.

5. *Per contra*, learned State counsel vehemently opposed the prayer while submitting that petitioner was caught red handed while being in possession of contraband having commercial quantity, hence, no case for grant of bail is made out. Further submits that petitioner is not only a previous convict; rather he is facing numerous criminal cases; thus, does not deserve concession of bail.

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

7. Para No. 13 of the status report filed by the State is recapitulated as under:-

“13. Role of the petitioner: The present FIR was registered against Tanvir Ahmed @ Ena (present petitioner) on



the basis of secret information. Initially, present FIR was registered based on the ruqa sent by ASI Harjinder Singh. Further investigation was carried out by SI Baljit Singh No.735/SGR, who apprehended the accused/petitioner and 65 strips of Etezola tablets and 37 strips of Alprasafe tablets were recovered from the conscious possession of the petitioner. Thereafter, on the basis of his disclosure, Mohammad Aamir @ Bawa was implicated as accused and offence under Section 29 NDPS Act was also added. He is the main accused in the present case from whose conscious possession the recovery was affected. As per chemical report, the total recovery of intoxicant material affected from the petitioner falls within the ambit of commercial quantity. So, a specific role is attributed to the petitioner in the commission of present offence.”

8. Also discernible that petitioner is involved in number of criminal cases and details of which are as under:-

Sr. No.	FIR No. and date	Sections	Police Station
1.	41 dated 13.04.2019	21 of NDPS Act	Police Station City-2, Malerkotla
2.	34 dated 29.02.2020	323, 427, 379-B, 148 read with Section 149 IPC	Police Station City-1, Malerkotla
3.	20 dated 06.03.2021	341, 323, 506, 148 read with Section 149 IPC	Police Station City-2, Malerkotla
4.	28 dated 01.04.2021	21, 29 of NDPS Act	Police Station City-2, Malerkotla
5.	211 dated 09.10.2022	21, 29 of NDPS Act	Police Station City-1, Malerkotla

Apart that, petitioner has also been convicted in a case under NDPS Act and detail of which is as under:-

FIR No.	Sections	Police Station
59 dated 16.06.2015	22 of NDPS Act	Police Station, Malerkotla

A bare perusal of the above FIRs reveals that petitioner is a habitual offender, having no respect for the rule of law.

9. 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.”

10. 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.

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. It is not in dispute that numerous criminal cases are pending against the petitioner. Thus, the credentials of petitioner cannot be said to be clean.

13. 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.

14. Arguments raised by learned counsel for the petitioner with regard to non sending of all the recovered tablets for chemical examination; non compliance of Section 42 & 50 of NDPS Act can not be gone into at the stage of deciding the bail petition and are matters of trial. The case laws relied upon by learned counsel for the petitioner are distinguishable on facts as in those cases, the recovery of contraband was made from transparent polythene bag, which is not the situation in the present case.

15. Also noteworthy that the menace of drugs has completely 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 as also gravity of offence and the fact that petitioner is a habitual offender, 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.

12.12.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No