



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.32069 of 2024 (O&M)
Date of Decision: 12.07.2024

Hardeep Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Arihant Goyal, Advocate,
for the petitioner.

Mr. Brijesh, Assistant Advocate General, Punjab
for the respondent.

MAHABIR SINGH SINDHU, J.

Second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) seeking bail pending trial to the petitioner in FIR No.277 dated 07.06.2021, under Sections 21, 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City Barnala, District Barnala.



(2) Allegations are that co-accused Jasvir Singh @ Seera & Chamkaur Singh @ Love were found in possession of 1795 intoxicant loose tablets & 33 grams intoxicant powder (*chitta*) without any license and petitioner has been nominated on the basis of disclosures, made by aforesaid co-accused.

(3) Learned Counsel contends that petitioner is in custody since 23.06.2021. Also contends that all other co-accused have been granted the concession of bail pending trial. Again contends that although petitioner is facing other criminal cases; but that is not a ground to deny him the benefit of bail pending trial. Also cited judgments of Hon'ble Supreme Court, rendered in **Maulana Mohd. Amir Rashadi Versus State of U.P. and another**, 2012(2) SCC 382 and **Prabhakar Tewari Versus State of U.P. & Anr.**, 2020(11) SCC 648, to substantiate his submissions.

(4) *Per contra*, learned State Counsel on instructions opposed the prayer while submitting that petitioner is facing other criminal cases of serious nature, under Section 307, IPC, Arms Act & NDPS Act and apart that there are five convictions against him. Further submitted that in view of the provisions of Section 37 of the NDPS Act, there is a bar for granting bail in such like matter. Also submitted that in case petitioner is released on bail, he shall hamper the trial; thus, he does not deserve the concession of bail pending trial.

(5) Heard learned Counsel for the parties and perused the paper-book.



(6) For reference, details of other pending/conviction case(s) would be as under:-

CONVICTION

<i>Sr. No.</i>	<i>FIR Number and date</i>	<i>Under Sections</i>	<i>Police Station</i>
1.	5 dated 22.01.2014	379, 406, 411, 34 IPC	Sadar, Raikot
2.	11 dated 11.03.2010	33, 34, 21, 25 Arms Act	Mehal Kalan
3.	122 dated 09.09.2009	15 NDPS Act	Raikot
4.	50 dated 22.03.2012	307, 379, 511 IPC & 25 Arms Act	Kotwali, Bathinda
5.	25 dated 25.03.2014	25 Arms Act	Sadar Raikot

PENDING CASES

<i>Sr. No.</i>	<i>FIR Number and date</i>	<i>Under Sections</i>	<i>Police Station</i>
1.	203 dated 16.07.2021	22, 29 NDPS Act	Tripuri, Patiala
2.	14 of 2019	120-B IPC & 25 Arms Act	Mehal Kalan, Barnala
3.	297 dated 10.10.2013 Challan not presented	223, 224, 225-A IPC	Sadar Dhuri
4.	84 dated 30.06.2020	304 IPC	Mehal Kalan, Barnala
5.	52 dated 01.07.2020	21, 25 NDPS Act	Thulliwal, Barnala
6.	137 dated 10.09.2016 Discharged by SDM, Payal on 12.06.2017	307, 336, 506, 148, 149 IPC & 25 Arms Act	Doraha, Ludhiana



(7) 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.”

(8) 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.



(9) 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*.

(10) 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.”

(11) 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*).

(12) Of course, pendency of other criminal cases may not be an absolute bar for granting bail in every case; but it is discernible that petitioner is facing other cases under NDPS Act and he is a previous convict under Section 307, IPC, Arms Act and even under NDPS Act as well.

(13) Although, learned Counsel for the petitioner has relied upon the judicial precedents i.e. **Maulana Mohd. Amir Rashadi & Prabhakar Tewari** (*supra*); but those are not helpful for the reason that this Court has shown its inability to record the twin-test satisfaction in his favour in terms of Section 37 (1)(b)(ii).

(14) 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 ground for granting him bail “at this stage”.

(15) In view of the above, there is no option except to dismiss the petition.



- (16) Ordered accordingly.
- (17) Needless to say that the observations made above shall not be construed as an expression of opinion on merits of the controversy in any manner.

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

12th July, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes