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

CRM-M-32067-2023 (O&M)

Date of decision : 15.02.2024

Yashir Ahmad

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sunny K. Singla, Advocate,
for the petitioner.

Ms. Manjot Kaur, 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.34 dated 02.03.2021, under Section 15(c) of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short, 'the NDPS Act') registered at Police Station, Bhogpur, District Jalandhar (Rural).

2. Above FIR was registered on the basis of secret information received by the police to the effect that petitioner and his associates were indulged in supply of poppy husk which they bring from Jammu & Kashmir and supply the same in the areas of Jalandhar, Ludhiana and Kapurthala. Finding the information to be credible, the Police party laid *naka* and a truck bearing registration No.JK-01-AH-

8779 was apprehended and 14 bags containing 350 kilograms of poppy husk was recovered from the truck being occupied by the petitioner and other co-accused.

3. Contends that petitioner is in custody for the last almost 03 years and co-accused with similar allegations has already been granted the concession of bail pending trial. Also contends that there is a delay in trial as no prosecution witnesses is coming forward.

4. *Per contra*, learned State counsel while opposing the prayer, on instructions, contended that the contraband recovered from petitioner is commercial in nature.

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 & 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. It is not in dispute that after completion of investigation, final report under Section 173 Cr.P.C. was presented on 15.07.2021; charges were framed under Section 15(c) of the NDPS Act on 02.06.2022; and now the trial is pending for prosecution evidence.

11. Of course, co-accused-Yaver Hussain has already been granted the concession of bail pending trial by the Coordinate Bench, but keeping in view the fact that the FSL report has already been received; recovery alleged against the petitioner is commercial in nature; and he has already been charged under Section 15(c) 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. In view of the above, there is no option except to dismiss the present petition at this stage.

13. Ordered accordingly.

14. The above observations may not be construed as an expression of opinion on merits of the present case in any manner.

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

15.02.2024
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No