



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M No.32445 of 2024 (O&M)  
Date of Decision: 16.07.2024

Zulfkar Ali @ Zulfi

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Dr. Sandeep Kumar Passi, Advocate for the petitioner.

Ms. Amrita Garg, AAG, Punjab for the respondent  
assisted by ASI Jagdeep Singh.

\*\*\*\*

MAHABIR SINGH SINDHU, J.

Third 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.72 dated 23.05.2020, under Sections 21, 22, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 465, 467, 468, 471, 120-B of the Indian Penal Code, 1860 added later on), registered at Police Station Mehal Kalan, District Barnala.



(2) Above FIR was registered on the basis of secret information received on 23.05.2020 at 09:30 PM by the police party to the effect that Lovepreet Singh @ Lovy s/o Ajmer Singh; Ravinder Singh @ Binda s/o Nachhattar Singh, residents of Divana; Satvir Singh @ Satti s/o Gurmeet Singh, r/o Chhiniwal Khurd; Balwinder Singh @ Nikka s/o Gurjant Singh, r/o Bakhatgarh and Ravi, r/o Chakkar, in connivance with each other, have formed a racket; engaged in procuring intoxicant tablets & narcotic substance from outside the State and supplying the same at Tallewal, Mehal Kalan and nearby villages to the persons who are involved in such like activities. Also alleged that all of them were seen roaming in a Verna Car bearing registration No.PB-11-AY-1700 (white colour) around Mehal Kalan Town and they are likely to supply the same in Mehal Kalan Town and nearby areas. If a raid is conducted, all of them can be nabbed along with contraband. The information was found to be credible and as a result thereof, the above FIR was registered.

(3) It is contended by learned Counsel for the petitioner that he was not named in the FIR; rather nominated on the basis of disclosure made by co-accused Balwinder Singh and apart that, there is no other material regarding his complicity; hence, no offence is made out against him. Also contended that father of co-accused Jatinder Kumar Arora is having a valid license issued by the competent authority for running the Chemist Shop; the entire drugs, recovered from him, were purchased against proper bills; but the police completely ignored the material at the time of alleged recovery;



hence, the entire prosecution case is vitiated. Further contended that petitioner is in custody since 29.05.2020 and there are about 160 prosecution witnesses; thus, trial is likely to take sufficient long time.

(4) On the other hand, learned State Counsel, while opposing the prayer, submits that petitioner is deeply involved in supply of illegal drugs in connivance with other co-accused; hence, his complicity is well apparent in the present case. Also submits that all the accused are running a big racket and there is huge recovery of intoxicant tablets & capsules apart from drug money as well as six Cars and more than 15 Kg. broken loose intoxicant tablets. Further submits that at the time of recovery, no license or permit was produced before the police party. Again submits that 10 mobile phones were also recovered from co-accused Jatinder Kumar Arora, which he was using for running all these illegal activities. Further submits that 21 accused have been charged under the NDPS Act as well as IPC for using the false & fabricated bills while transporting the contraband. Again submits that petitioner has been specifically charged under Sections 22 & 29 of the NDPS Act as well as Sections 467, 468, 471 & 120-B IPC.

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

(6) There is no dispute that petitioner was not named in the FIR; rather has been nominated on the basis of disclosure made by co-accused Balwinder Singh.



Records reveal that huge quantity of contraband was recovered from the Verna Car on 23.05.2020.

During investigation, some other accused were also found to be involved in the drug racket and that led to recovery of more contraband at their instance.

On 26.05.2020, petitioner Zulfikar Ali @ Zulfi was nominated as an accused and after his arrest on 29.05.2020, recovery of 12,000 more tablets of Clovidol (Tramadol Hydrochloride) was effected from him.

Later on, petitioner-Zulfikar Ali disclosed the name of four other accused i.e. Bittu Ram, Aman Singla, Manpreet Singh & Firozdeen and from them also, huge contraband was recovered and which is as under:-

| Sr. No. | Name of the accused | Recovery                                                |
|---------|---------------------|---------------------------------------------------------|
| 1.      | Bittu Ram           | 10,500 Tablets of Clovidol (Tramadol Hydrochloride)     |
| 2.      | Aman Singla         |                                                         |
| 3.      | Manpreet Singh      | 5000 Tablets of Clovidol (Tramadol Hydrochloride)       |
| 4.      | Firozdeen           | Registered owner of Verna Car, which has been recovered |

Further discernible that during investigation, name of one Harish Bhatia @ Raju Sachdeva also surfaced and 57,600 intoxicant capsules, marka Sinplex C+ (Tramadol Hydrochloride, Dicyclomine Hydrochloride, Chlorpheniramine Maleate & 40,000 intoxicant capsules, marka Pervorin Spas (Tramadol Hydrochloride, Dicyclomine Hydrochloride, Chlorpheniramine Maleate, Diclofenac Sodium) were recovered from him on 15.07.2020.



Still more contraband i.e. 20,000 intoxicant tablets, marka Clovidol (Tramadol Hydrochloride) as well as drug money Rs.85,000/- were recovered from Harish Bhatia @ Raju Sachdeva.

On the basis of disclosure made by above Harish Bhatia @ Raju Sachdeva, co-accused Jatinder Kumar Arora was nominated and upon his arrest on 25.07.2020, recovery of following contraband is alleged to have been effected from him:-

| Sr. No. | Date       | Recovery                                                                                                         |
|---------|------------|------------------------------------------------------------------------------------------------------------------|
| 1.      | 28.07.2020 | 34,992 capsules, containing salt Tramadol Hydrochloride, Dicyclomine Hydrochloride, Chlorpheniramine Maleate     |
| 2.      | 28.07.2020 | 17,250 tablets, containing salt Tramadol Hydrochloride, Acetaminophen                                            |
| 3.      | 28.07.2020 | 18,000 tablets, containing salt Tramadol Hydrochloride                                                           |
| 4.      | 28.07.2020 | 51,750 tablets, containing salt Alprazolam                                                                       |
| 5.      | 05.08.2020 | 12,000 loose white colour intoxicant tablets, containing salt Tramadol Hydrochloride along with 10 mobile phones |

Thus, in such a scenario, *prima facie*, it is wrong to contend on behalf of the petitioner that there is no material regarding his complicity.

(7) As on today, all the 21 accused have been charge-sheeted under Sections 22 & 29 of the NDPS Act along with offences punishable under Sections 467, 468, 471 & 120-B IPC for possessing illicit drugs as well as fabrication of bills for sale & purchase of the same and petitioner is one of them.



(8) Here it is also 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.”*

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.



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 prosecution has already examined 44 witnesses out of total 160 and 54 PWs have been given up.

(11) As the recovery alleged against the petitioner is too heavy and commercial in nature; he has already been charge-sheeted; 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.

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

16<sup>th</sup> July, 2024  
Gagan

( MAHABIR SINGH SINDHU )  
JUDGE

|                           |     |
|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |