



216-3

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

CRM-M-34936-2023 (O&M)
Date of decision : 20.09.2024

Parkash Jain

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Raghav Gulati, Advocate,
for the petitioner.

Mr. Ajaib Singh, Addl.A.G., 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.0058 dated 24.04.2023, under Sections 22 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985; and Sections 419 & 120-B of the Indian Penal Code, 1860, registered at Police Station City-I, Malerkotla, District Malerkotla, Punjab.

2. Allegations are that 2,70,000 intoxicating tablets (make Tramadol Hydrochloride 100 mg Tablets Toridol SR), were recovered from the co-accused-Mohd. Tahir, Umardin & Mohd. Sehbaz. Petitioner being franchise of a Courier Company, is alleged to have delivered 05 boxes containing the contraband.

3. Contends that petitioner is not named in the FIR; nor any recovery was effected from him. Also contends that co-accused Mohd.

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Umar booked 05 boxes along with bill with his Courier firm, for shipping and delivery in the name of Shahzad, without having any knowledge about the contents of said boxes. Further contended that petitioner is in custody since 12.05.2023; report under Section 173 Cr.P.C. already stands presented; and out of total 45 prosecution witnesses, none has been examined so far; therefore, trial is likely to take sufficient long time. Again contended that petitioner was granted interim bail by this Court on 15.11.2023; which has been extended from time to time and petitioner has not misused the concession, in any manner.

4. *Per contra*, learned State counsel, while opposing the prayer, submits that 2,70,000 tablets having salt “Tramadol Hydrochloride” were recovered from the petitioner, which is commercial in nature. Again submitted that in view the specific bar under Section 37 of the NDPS Act, petitioner is not entitled for bail, at this stage.

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—

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(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

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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. Of course, the petitioner was granted interim bail by this Court vide order dated 15.03.2023 on account of the fact that three accused, namely, Mohd. Umar Deen son of Mohd Salim Ansari, Akashdeep Singh @ Ashu Singh and Yogesh Bansal, were at large. For reference, order dated 15.03.2023 reads as under: -

"It transpires that FIR was registered way back on 24.04.2023. Thereafter, keeping in view the gravity of offence, Special Investigation Team (SIT) headed by

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Superintendent of Police (Investigation), Malerkotla, was constituted. Although considerable period has gone by, but the main accused, i.e. Mohd. Umar Deen son of Mohd Salim Ansari, Akashdeep Singh @ Ashu Singh and Yogesh Bansal are still at run; thus, investigation is at very slow pace.

In view of the above, let officer heading the SIT be present for assistance in the matter.

Posted for 09.01.2024.

In the meanwhile, petitioner be released on interim bail in the present case till the next date of hearing on his furnishing adequate bail and surety bonds subject to the satisfaction of learned trial Court/CJM/Duty Magistrate concerned.”

Today, during the course of hearing, learned State counsel apprised that all three aforesaid accused have been declared as ‘proclaimed offenders’ by the Court of competent jurisdiction. In view of the above, the interim concession granted to the petitioner would be of no help; hence contention in this regard is also rejected.

11. Even otherwise, recovery alleged in this case is commercial in nature; therefore, this Court is not inclined to record the twin-test satisfaction in his favour as per Section 37 (1)(b)(ii) (*ibid*). 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

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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. The appellant, as it seems from the allegations, is a drug peddler and there is every likelihood of his returning to the same illicit trade once he is allowed the privilege of pre-arrest bail. ”

12. In view of the above, there is no option except to dismiss the petition, at this stage.
13. Ordered accordingly.
14. Needless to say that interim bail granted to the petitioner vide order dated 15.11.2023 and extended from time to time, shall come to an end, automatically.
15. 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 stand disposed off.

20.09.2024
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(MAHABIR SINGH SINDHU)
JUDGE

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