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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34998-2024
DECIDED ON: 24.07.2024

CHARAN SINGH @ CHARANJEET SINGH @ CHANNU
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kuldip Singh, Advocate
for the petitioner.
Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., for grant of anticipatory bail to the petitioner in FIR No.57 dated 29.03.2024, under Sections 21(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sadar Fazilka, District Fazilka.
2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as neither any recovery has been made from him nor was he named in the FIR. He would further submit that co-accused Harjinder Singh has nominated the petitioner in his disclosure statement and he has no concern with the alleged recovery of the contraband weighing to 9 kg Heroin.
3. Notice of motion.



4. On the asking of Court, learned State Counsel accepts notice on behalf of respondent-State and vehemently opposes the concession of anticipatory bail on the ground that a huge quantity of contraband weighing 9 kg of Heroin has been recovered in the present case and the petitioner is one of the co-accused who was found to be involved in illegal trafficking of the contraband.

5. Heard learned counsel for both the parties.

6. As per the allegations a huge quantity of Heroin weighing 9 kg and drug money was seized by the BSF near the international border. Subsequent to which this present FIR was lodged and on investigation it was found that a drone intruded from Pakistan side which was indulged in cross-borders smuggling of contraband. Seeing the gravity of the offence wherein the petitioner along with the other co-accused is involved in cross-border smuggling this Court finds no reason to enlarge the petitioner anticipatory bail.

7. Besides the spreading of the drugs in State of Punjab is becoming day by day a terrible menace which is completely destroying the very fiber of our society being also instrumental in subverting the tender soul of our young generation which is being badly contaminated by such danger in a very alarming provisions calling for severe punishment in case of illegal possession and transportation of drugs meant for personal consumption and eventual trade."

8. Further dependence can be made upon the judgment of Supreme Court passed in Hira Singh vs. Union of India, (2020) 20 SCC 272, wherein in has mandated that the provisions of the NDPS are not to be construed liberally but to ensure effective implementation of rule of law so as to achieve the



object of enactment {NDPS} by curbing and stringently deal with nefarious activities/ illegal trafficking in powerful, dangerous and injurious illegal street drugs under the [NDPS Act](#).

9. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands.

10. The drug menace in both the States is writ large and large number of youth are falling prey at the hands of such mafia. The role of the petitioner is not that of law abiding citizen as is evident from the record before this Court. With deep concern it is of utmost importance at this stage to say that clandestine smuggling of narcotics drugs and psychotropic substance has led to drug addiction among a sizeable section of the public. It has to be borne in mind that in a murder case the accused commits murder of one or two persons, while those persons who are dealing in a narcotic drugs are instrumental in causing death or inflicting death blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely obviously for large stake and easy illegal profit making mode. In the present prevailing scenario, the drug trafficking, trading and its use has acquired dimensions of an epidemic which not only effects the economic policies of the State but corrupts the system apart from leaving the impact of producing sick society. I will not be shy of saying that anti drug justice is a criminal dimension of



social justice as drug addiction forms vitals of the society alongwith illicit money generation by drug .trafficking

11. In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

[37. 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 3 [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.]

12. Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.



13. Other than the aforesaid discussion it is Section 35 of NDPS Act which raises a presumption of culpable mental state of mind for which no explanation is forthcoming from the petitioner in this regard. Section 35 of NDPS Act reads as under:

“35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section “culpable mental state” includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

14. The Hon’ble Supreme Court elaborated the expression “reasonable ground” in 'Customs, New Delhi v Ahmadalieva Nodira' 2004 (2) RCR (Criminal) 192 and 'State of Kerala v Rajesh' 2020 (1) RCR (Criminal) 818, which can be read as under:

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence



while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

[emphasis added]

21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.”

15. Further Section 37 of the NDPS Act, envisaged to twin conditions: The court’s satisfaction that there were reasonable grounds for believing that the accused was not guilty; and he was not likely to commit any offence while on bail. The statute used “three expressions” — “the court is satisfied”; “reasonable grounds”, and “believing that the accused is not guilty”, and as such, it does not restrain the Court from exercising its jurisdiction. The requirement of recording reasons would not mean to record in writing establishing that an accused is innocent’. Hence it is the subjective satisfaction of the court based on an objective assessment of the material brought before it for giving a reasonable ground to sustain a belief.



16. The drug peddlers have successfully destroyed not only the social fabric of the society but finishing the youth, who are future generation of the country. Such accused need to be dealt with firmly and sternly with no sympathy to be shown to them particularly in the case in hand, wherein the petitioner is involved in smuggling of dangerous contraband at the international borders.

17. In the light of discussion made hereinabove and looking into the cogent material before this Court, I am of the considered view that since the recovery of contraband i.e., 9 kg of Heroin is commercial in nature and the conduct of the petitioner is suspicious and the manner in which the contraband in the instant case has been got recovered, this Court has no reason to believe that such huge quantity by no stretch of imagination can be a case of false implication and of a planted recovery in any manner.

18. In the light of above, considering the huge quantity of the contraband and the manner in which the *modus operandi* is evident, this petition deserves to be dismissed having no merits. Hence, the same stands dismissed with no order as to costs.

24.07.2024
anuradha

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>