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

CRM-M-35265-2024

DECIDED ON: 25.07.2024

MOHAMMAD ASHRAF

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. P.S Chahal , Advocate
for the petitioner.

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 case FIR No.67, dated 30.50.2024, under Sections 22 of NDPS Act, 1985, registered at Police Station City-1, Malerkotla, Malerkotla.

2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and alleged recovery has been falsely planted upon him. The petitioner is a registered pharmacist and is running his medical store at Jarg Road Malerkotra. It is further contended that there is non compliance of Section 100(4) Cr.P.C., as no independent and respectable inhabitants of the locality has been joined by the police. It is improbable that a person could run away from the spot where allegedly large number of police personnels were said to be present.

3. Notice of motion.

4. On the asking of Court, Mr. Rajiv Verma, DAG, Punjab, accepts notice on behalf of respondent-State. He, on instructions from SI Surinder Kumar,

Station House Officer, Police City-1, Malerkotla, that the alleged contraband i.e. 131 strips of intoxicant tablets labelled as Calmpik 0.5 (each strip containing 10 tablets) i.e. total 1310 tablets have been recovered from the almirah lying in the house of the petitioner. The quantity alleged to have been recovered falls under the commercial quantity, which attracts Section 37 of the NDPS Act. Thus, the petitioner is not entitled to be released on anticipatory bail.

5. Having heard learned counsel for both the parties.

6. As per the allegations 1310 intoxicant tablets containing salt “ALPRAZOLAM”, weighing 170.5 grams were recovered from the almirah lying in the house of the petitioner and the petitioner is unable to show any permit or licence being pharmacist for keeping the same in his house.

7. The drug is a social malady, while drug addiction eats into the vitals of the society whereas drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. The devastating effects of narcotic drugs on any person who comes to its touch are too well known. Normally, such a person ceases to be a normal human being, and is more or less reduced to zombie living animal existences and rushing fast to meet the maker. Divine qualities of an individual who consumes narcotic drugs disappear and they are the first sacrifices one normally makes while falling prey to use of drugs. Anxiety of legislature is to prevent the adverse affect of such drugs and substances on the society.

8. The role of the petitioner is not that of law abiding citizen, as is evident from the record before this Court. 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 along-with illicit money generation by drug trafficking.

9. 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 subsection (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.]

10. 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.

11. 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.”

12. Having heard the learned counsel and examining the facts and circumstances at this juncture, there is no material evidence to establish innocence of the petitioner-accused as such, the question of admitting him on bail does not arise at all.

13. There is no question or doubt to the recovery effected i.e., 1310 intoxicant tablets containing salt ‘ALPRAZOLAM’, the total weight of the alleged contraband comes out to be 170.5 grams, which is alleged to have been

quantity by no stretch of imagination can be a case of false implication and of a planted recovery in any manner.

14. In the light of above discussions, this Court is of the view that the custodial interrogation of the petitioner is required at this stage wherein commercial quantity of contraband has been recovered from the house of the petitioner. Hence, the present petition is dismissed with no order as to costs.

25.07.2024

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*