

201-1

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

**CRM-M-41999-2022 (O&M)**

**Date of decision : 19.12.2024**

Ashok Kumar

...Petitioner(s)

Versus

Union of India

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Tarun Sharma, Advocate for the petitioner.

Ms. Anju Bansal, Advocate,  
for Mr. Sourabh Goel, Sr. Standing Counsel, NCB,  
for the respondent.

**MAHABIR SINGH SINDHU, J.**

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short, the Cr.P.C.) for grant of bail pending trial to the petitioner in NCB Crime No.46 dated 01.07.2021, under Sections 8, 20, 25, 27-A, 29 & 60 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short, 'the NDPS Act') registered at Police Station Narcotics Control Bureau, Zonal Unit, U.T. Chandigarh.

2. Allegations are that 3 kg. 800 grams of *Charas* was recovered from the petitioner and other co-accused.

3. Contends that the entire prosecution case is vitiated as the procedure laid down for drawing samples was not followed inasmuch as all seven packets were converted into two parcels. Further

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petitioner. Again submitted that petitioner, aged 70 years, is in custody since 01.07.2021 and no useful purpose would be achieved by keeping him under further incarceration.

4. *Per contra*, learned State counsel, while opposing the prayer, submits that heavy quantity of *Charas* weighing 3 kgs. 800 grams was recovered from the petitioner and other co-accused, which is commercial in nature. Specifically submitted that the contents of all 07 packets were tested using the Drug Detection Kit; therefore, there is no violation of the statutory provisions of the NDPS Act. Again submitted that in view the specific bar under Section 37 of the NDPS Act, petitioner is not entitled for concession of bail, at this stage. Also submitted that except 01 prosecution witness, the entire prosecution evidence is over.

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*

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*(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*

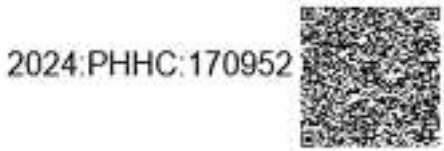
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*Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the court that there are reasonable grounds for believing that 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. The recovery alleged in the present 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*). Still further, in view of the specific stand taken by respondents that the contents of all 07 packets were duly tested using the Drug Detection Kit; therefore, the contention of petitioner that the samples were not drawn in accordance with the procedure laid down under the NDPS Act, would at best be a plea of defence before learned Special Court, at appropriate stage.



11. In view of the above and the fact that trial is at fag end, this Court is not inclined to accept the prayer.
12. As a result thereof, there is no option except to dismiss the petition, at this stage.
13. Ordered accordingly.
14. Above observations be not construed as an expression of opinion on merits of the case, in any manner.

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

**19.12.2024**  
*atulsethi*

**(MAHABIR SINGH SINDHU)**  
**JUDGE**

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