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

CRM-M-40354-2024 (O&M)

Date of decision : 25.09.2024

Gurbhej Singh @ Bheja

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ranbir Singh Sekhon, Advocate for the petitioner.

Mr. Mohit Kapoor, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU, J.

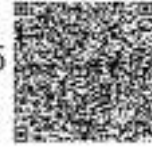
Present second petition has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, the BNSS') for grant of bail pending trial to the petitioner in FIR No.198 dated 17.11.2021, under Sections 21(c), 25 & 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short, 'the NDPS Act') registered at Police Station Special Task Force, District SAS Nagar (Mohali), Punjab.

2. Allegations are that 01 kg. of Heroin was recovered from the co-accused-Harbhej Singh @ Bheja and petitioner was nominated on the basis of disclosure made by said co-accused.

3. Contends that the entire prosecution case is vitiated since there is no compliance of the mandatory provisions of Section 42 of the NDPS Act as the alleged secret information was not sent to the

immediate superior officer. Further contends that petitioner was not

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arrested from the spot; rather nominated on the basis of disclosure made by co-accused Harbhej Singh @ Bheja. Also contended that no recovery was effected from the petitioner. Again submitted that petitioner is in custody since 10.12.2022 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 Heroin (01 kg.) was recovered from the co-accused, 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 concession of bail, at this stage. Again submitted that petitioner is a habitual offender and involved in two more cases under the NDPS Act, whereas, he has been produced by issuing production warrants in other 03 cases including the 01 under NDPS Act; therefore, does not deserve the concession of bail.

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:-

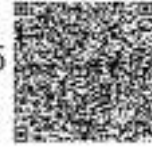
“Section 37 of the NDPS Act – Offences to be cognizable and non-bailable.—

(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.”*

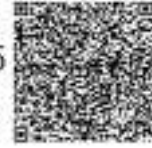
7. Aforesaid Section is in the nature of non-obstante clause to Cr.P.C. including Section 439 thereof and which, *inter alia*, lays down that no person accused of an offence involving commercial quantity shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing 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 the limitations imposed under Section 439 of the

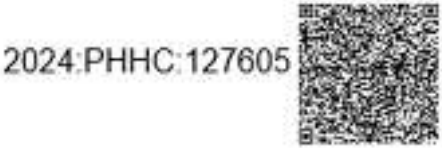
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Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub- section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the 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."

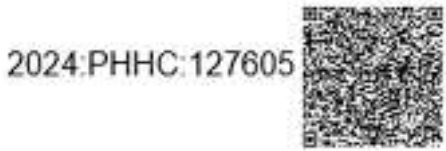
10. The recovery alleged in the present case is commercial in nature; therefore, this Court is not inclined to record the twin-test satisfaction in his favour as per Section 37 (1)(b)(ii) (*ibid*). The contention of petitioner that he was not apprehended on the spot; rather nominated on the basis of disclosure made by a co-accused would at best be a plea of defence before learned trial Court, at appropriate stage. Even the point of custody is liable to be rejected considering the antecedents of petitioner as he is involved in a number of criminal case



Sr. No.	FIR No. and date	Police Station	Sections	Remarks
1.	207 dated 14.09.2014	Sadar Tarn Taran	21 of the NPDS Act	Undertrial
2.	192 dated 09.11.2021	STF, Amritsar	21(c) & 25 of the NDPS Act	Undertrial
3.	80 dated 12.08.2019	Bhikhiwind	27-A of the NDPS Act	Detained on production warrants
4.	45 dated 25.01.2023	Islamabad	42/52-A Prisons Act	Detained on production warrants
5.	54 of 2017	Jandiala	452 & 307 read with Section 34 IPC	Detained on production warrants

11. 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 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. 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.

25.09.2024
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(MAHABIR SINGH SINDHU)
JUDGE

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