

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(234)

CRM-M-41097-2024 (O&M)
Date of Decision: 02.09.2024

Punita Devi @ Priya

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Jagraj Singh, Advocate for the petitioner.
Ms. Palika Monga, DAG, Haryana, for the respondent.

MAHABIR SINGH SINDHU.J

Present second petition has been filed under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (for short, 'BNSS') for grant of bail pending trial to the petitioner in FIR No.92 dated 18.02.2023 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short, 'NDPS Act') (Section 27-A of NDPS Act was added later on) at Police Station Sadar Fatehabad, District Fatehabad.

2. Custody certificate of petitioner has been produced by learned State counsel and the same is taken on record.

Registry to do the needful.

3. Allegations are that on the basis of a secret information, petitioner was apprehended by the police party and recovery of 2.8 Kgs. of *charas* was effected from her.

4. Contends that petitioner has been falsely implicated in the



present case and the said recovery of 2.8 Kgs. of *charas* was planted upon her. Further contends that no independent witness was joined at the time of her arrest. Also contends that report under Section 193 of BNSS was not presented within 180 days. Lastly submitted that petitioner is in custody since 18.02.2023; report under Section 193 of BNSS has been presented, but no prosecution witness has been examined so far; thus, trial will take sufficient long time.

5. *Per contra*, learned State counsel, while opposing the prayer, submits that recovery alleged against the petitioner is commercial in nature and as such, in view of the specific bar under Section 37 of the NDPS Act, petitioner is not entitled for bail pending trial, at this stage.

6. Heard learned counsel for the parties and perused the paper-book.

7. 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

(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.”

8. Aforesaid Section is in the nature of non-obstante clause to BNSS including Section 483 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.

9. 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*.

10. 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 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.”

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

Moreover, the alleged recovery was effected in the presence of S.D.O, Command Area Development Authority (CADA), a Gazetted Officer and as such, the allegation of false implication is rejected.

12. In view of the above, no ground is made out to grant bail to the petitioner, at this stage.

13. Consequently, petition is dismissed.

14. The above observations may not expression of opinion on merits of the present case in any manner.

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

(MAHABIR SINGH SINDHU)
JUDGE

02.09.2024
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No