

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46989-2024
Reserved on: 18.10.2024
Pronounced on: 25.10.2024

Anil ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S.Mamli, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
338	01.08.2024	Sadar Fatehabad	22-C/61/85 of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 6 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the status report filed by the State, and it would be relevant to refer to para 2, which reads as follows:-

“2. That brief facts of the case are that present FIR has been registered on the complaint of complainant ASI Suryakant. Complainant asserted in the FIR that 01.08.2024, complainant along with fellow police officials in connection with prevention of narcotics were present at Khunan chowk on Ratia road, where, he received secret information that Karamvir @ Deepak (co-accused) son of Krishan Lal, resident of village Hanspur, Satpal @ Satta (co-accused) son of Balwinder, resident of Hanspur and Anil (petitioner-accused) son of Hardish, resident of Hanspur are indulge in the business of selling narcotics tablets and they all of three with huge quantity of narcotic tablets in their possession on motorcycle Splendor Plus No. PB-51B/5337 and Motorcycle Platina No.PB-31L/9485 are standing on Ratia road just before village Hanspur for sale of narcotic tablets. The information being reliable, information under Section 42 of NDPS Act was prepared and sent to Police Station Sadar, Fatehabad. Thereafter raid was conducted at the disclosed place where three

boys were seen standing there and one of them was having one black coloured polythene envelope in his right hand and two motorcycles were also seen parked there. On seeing the police officials in Government vehicle, one of the boy ran towards fields and two of them were to sit on motorcycles but they were apprehended. The boy holding the envelop disclosed his name as Satpal @ Satta son of Balwinder Singh @ Pappu and another boy told his name as Karamvir @ Deepak son of Krishan Lal@ Piku. Separate notices under Section 50 of NDPS Act served upon both of them and after obtaining their reply, Sh. Sharvan Kumar AETO Excise Taxation Officer, Fatehabad was requested to reach on the spot and after his arrival, personal search of both the accused, their motorcycles and the black coloured polythene envelop was conducted, the videography of which was also conducted. On search of co-accused Karamvir alias Deepak and his motorcycle bearing Reg. No. PB51B5337 marka Hero Splendor colour black, a mobile phone was recovered from the personal search of co-accused Karamvir alias Deepak. Thereafter, complainant conducted the search of co-accused Satpal alias Satta and his motorcycle bearing Reg. No. PB31L9485 marka Platina colour black was conducted and during search, mobile phone was recovered during his personal search and during search of polythene envelop carried out by co-accused Satpal alias Satta, 120 strips each containing 10 tablets of NRX Tramlax- SR-100 Tramadol Hydrochloride Extended Release Tablets USP 100 mg having batch No.T240061, Mfg Jan 2024 and Exp. Dec 2025 weighing 549 grams were recovered. The recovered narcotic tablets along with above motorcycles were taken into police possession. Accused Satpal @ Satta and Karamvir @ Deepak told the name of boy fled from the spot as Anil (petitioner-accused) son of Hardish, resident of Hanspur. On the complaint of complainant, present case was registered under section 22(c) of NDPS Act at Police Station Sadar Fatehabad against three accused persons namely (i) Karamvir @ Deepak (ii) Satpal @ Satta and (iii) Anil (petitioner-accused) and investigation was carried out.”

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail and refers to the status report.

7. It would be appropriate to refer to the following portions of the status report, which read as follows:

“9. That during investigation, Investigating Officer obtained Call details record of mobile numbers 9896655810 and 8708276028 of co-accused Satpal alias Satta and on perusal of the Call details record, there are several conversations of co-accused Satpal alias Satta with supplier of recovered contraband i.e. with co-accused Ankur Mehta on his mobile number 9257581525 and 8160612506. Moreover, there are also several conversations

between co-accused Satpal alias Satta with mobile number 98965555810 and Anil (petitioner-accused) on his mobile number 9710022500, Details of relevant Call details are enclosed herewith as Annexure R-3 for the kind perusal of the Hon'ble High Court.

11. That role and evidence against the petitioner-accused Anil is as under:-

(A). ROLE & CULPABILITY OF PETITIONER: -

(i) There are serious allegations against the present petitioner-accused Anil as the present petitioner was remained with other accused persons i.e. co-accused Satpal @ Sattu and Karamvir @Deepak, but, when raid was conducted by the police, petitioner-accused Anil fled away from the spot.

(ii) Petitioner has been specifically named by co-accused Satpal @ Sattu (who was arrested on spot) and petitioner has been specifically named in the FIR.

(B) INCRIMINATING EVIDENCES:-

(i) There are several Call details (Annexure R-3) record between petitioner-accused Anil and co-accused Satpal alias Sattu.

12. That custodial interrogation of present petitioner is utmost essential to unveil the entire racket of smuggling of contraband and for proper investigation of the present F.I.R. In the event of dismissal of the present petition, the police custody of petitioner is necessary for proper investigation and to reveal the entire drug racket. There is likelihood that after being released on anticipatory bail, the petitioner will not co- operate in the investigation.”

8. In Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

9. The status report filed by the police reveals that although initially, the investigator proceeded to identify the third man, who had fled, based on the interrogation of the co-accused. However, during the investigation, they stumbled upon the call details. As such, the primary evidence is of calls and not of the disclosure statements of the co-accused.

10. Dealing in 549 grams of Tramadol is a punishable offence under the NDPS Act in the following terms:

Substance Name	Tramadol
Quantity detained	549 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	219.60%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1762(E)
dated	4/26/2018
Sr. No.	238 ZH
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1761(E) & S.O. 3448(E)
dated	26-Apr-2018 & 26-Jul-2018
Sr. No.	110Y
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

11. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act and the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

Given the above, the petitioner has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

12. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. 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. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the

accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

(a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [Narcotics Control Bureau v Kishan Lal, 1991 (1) SCC 705, Para 6].

(b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [Customs, New Delhi v. AhmadalievaNodira, (2004) 3 SCC 549, Para 7].

(c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [Union of India v. Niyazuddin SK &Anr, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].

(e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [N.R. Mon v. Md. Nasimuddin, (2008) 6 SCC 721, Para 9].

(f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(g). 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. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[31]. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

13. The petitioner's counsel has referred to the bail petition, and it would be relevant to refer to the following paras:

14. The petitioner's stand in para 3 of the bail is as follows:-

"3. *That the present petitioner was not present on the spot. He has been falsely implicated. The contraband was recovered from co-accused Satpal as mentioned in the FIR. The present petitioner has nothing to do with the alleged offence. The present petitioner has never purchased or sold the alleged contraband. There is nothing on record that the present petitioner is involved in supplying the contraband to the co-accused Satpal and Karambir.*"

15. The petition has taken the plea of alibi but did not mention his location at that point in time. Thus, the stand does not even prove the preponderance of probabilities.

16. The petitioner's stand in para 4 of the bail is as follows:-

"4. That as per the version of the police officials, one boy fled away from the spot and the police officers could not apprehend the boy when they were apprehend the other co-accused. The officials has falsely involved the present petitioner in the FIR. He has nothing to do with the offence. The best case is that the petitioner was somehow known to the accused persons but there is no proof that he was involved in the business of drugs trafficking. The petitioner is a law abiding citizen and there is no criminal incident of the petitioner. The petitioner is being framed by the officials. There is no concrete evidence against the present petitioner."

17. Although the petitioner's explanation, without conceding, is that he might be known to the accused, it would not imply involvement. However, to satisfy the burden placed by the Executive, passed by the legislature under S. 37 of the NDPS Act, 1985, and upheld by the Hon'ble Supreme Court, is not that simple. The petitioner must at least state something for the Court to take a conscious decision about such a stand. The position mentioned in para 4 is sketchy and does not discharge the statutory burden.

18. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

25.10.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: YES.