

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.47816 of 2024 (O&M)
Date of Decision: 18.10.2024

Deepak Kohli

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

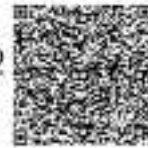
Present:- Mr. Satnam Singh Gill, Advocate for the petitioner.
Mr. T.P.S.Walia, AAG, Punjab for the respondent.

MAHABIR SINGH SINDHU, J.

Third petition has been filed under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) [earlier Section 439 of
the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*)] seeking bail
pending trial to the petitioner in FIR No.326 dated 07.10.2022, under Section
22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short
'NDPS Act'*), registered at Police Station Dera Bassi, District SAS Nagar
Mohali.

(2) Allegations are that petitioner was found in possession of 20
boxes of Tramadol Capsules IP Tramwel (each box containing 30 strips and

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each strip containing 10 capsules, total 6000 capsules) and 19 boxes of Proxywel spas Capsules (each box containing 30 strips and each strip containing 08 capsules, total 4560 capsules) without any license or permit.

(3) Learned Counsel contends that petitioner is in custody since 07.10.2022 and even Notice served under Section 50 of the NDPS Act was also not in consonance with the requirement of law. Also contends that it is a planted recovery against the petitioner; thus, further incarceration would not serve any purpose. Further contends that trial is likely to take sufficient long time.

(4) *Per contra*, learned State Counsel on instructions opposed the prayer while submitting that it is a chance recovery; petitioner was duly offered to the search in the presence of Magistrate or a Gazetted Officer and reference has been made to Annexure P-2. Also submits that recovery alleged against the petitioner is commercial in nature; thus, in view of the provisions of Section 37 of the NDPS Act, there is a specific bar for granting bail in such matter.

(5) Heard learned Counsel for the parties and perused the paper-book.

(6) Before proceeding further, it is relevant to extract 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.—

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(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.”

(7) Aforesaid Section, which is in the nature of non-obstante clause to Cr.P.C. including Section 439 thereof, *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

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(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) Also necessary to mention here that 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

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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) Alleged recovery is commercial in nature; petitioner is the sole accused; charges have already been framed against him and prosecution evidence is going on.

Thus, the plea of faulty Notice under Section 50 of the NDPS Act will not help the petitioner to grant him bail; rather at best, it may be raised as a defence during trial.

(11) Consequently, this Court is also not inclined to record twin-test satisfaction in favour of petitioner as per Section 37 (1)(b)(ii).

(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.

18th October, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes