

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.48572 of 2024 (O&M)
Date of Decision: 29.11.2024

Inderjeet Singh @ Malli

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

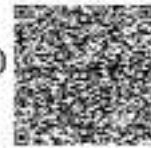
Present:- Mr. Rajiv Kumar Saini, Advocate for the petitioner.
Mr. T.P.S.Walia, AAG, Punjab for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking bail pending trial to the petitioner in FIR No.97 dated 05.06.2023, under Sections 18, 21, 25, 27-A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) and Sections 25 & 27 of the Arms Act, 1959, registered at Police Station Gharinda, District Amritsar.

(2) Allegations are that petitioner, along with co-accused, is actively involved in illegal selling of Heroin/Opium and other intoxicants. When raid was conducted by the police, 4 Kgs. of Opium along with drug

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money of Rs.4 Lakh, two empty magazine, four live cartridges, two fake arm license, one Thar, one Creta and one Activa were recovered. Also alleged that from the purse of co-accused Manpreet Kaur, Rs.1 Lakh, key of Thar Car and fake arm license of Rajinder Kumar were recovered.

(3) Reply by way of an affidavit dated 28.11.2024 of Sh. Lakhwinder Singh, Deputy Superintendent of Police, Sub Division Attari, Amritsar (Rural), along with copy of FSL Report as Annexure R-1, has been filed. The same is taken on record. Copy thereof supplied to the opposite side. Registry to tag the affidavit at appropriate place.

(4) Learned Counsel contends that no recovery was effected from the petitioner; rather alleged recovery was made from the house of co-accused Rajinder Kumar. Further contends that another co-accused, namely, Manpreet Kaur @ Kirandeep Kaur & Gurdev Singh @ Mota, with similar allegations, have already been granted the concession of interim bail by this Court. Lastly contends that petitioner is in custody since 05.06.2023 and charges are yet to be framed. Thus, trial will take sufficient long time; hence, further incarceration of the petitioner will not serve any purpose.

(5) *Per contra*, learned State Counsel on instructions while opposing the prayer submits that alleged recovery of 04 Kgs. Opium is commercial in nature and apart that drug money of Rs.4 lakh was also recovered. Thus, in view of the provisions of Section 37 of the NDPS Act, there is a specific bar for granting bail in such matter. Lastly submits that



petitioner is facing four other criminal cases, including two under the NDPS Act, hence does not deserve the concession of bail.

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

(7) 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.—

(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—

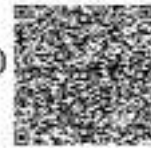
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(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, which is in the nature of non-obstante clause to Cr.P.C. including Section 439 thereof, *inter alia*, lays down that no person

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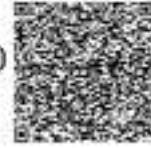
accused of an offence involving commercial quantity shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and not likely to commit any offence while on bail.

(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) 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

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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) Also noteworthy that 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 Versus 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

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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.”

(12) Since alleged recovery in the present case is commercial in nature along with drug money of Rs.4 lakh. Of course, charges are yet to be considered; but apart from the present case, petitioner is facing two other cases under the NDPS Act; therefore, this Court is not inclined to record twin-test satisfaction in his favour as per Section 37 (1)(b)(ii).

(13) In view of the above, there is no option except to dismiss the petition “at this stage”.

(14) Ordered accordingly.

(15) The above observations be not 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.

29th November, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes