



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.58683 of 2023 (O&M)
Date of Decision: 15.07.2024

Sukhdev Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

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

Mr. T.P.S.Walia, Assistant Advocate General, Punjab
for the respondent.

MAHABIR SINGH SINDHU, J.

Second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail pending trial to the petitioner in FIR No.11 dated 12.04.2022, under Sections 18, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*), registered at Police Station State Special Operations Cell, Amritsar, District Intelligence Wing (CID).



(2) Allegations are that on the basis of some secret information, petitioner, along with co-accused Raju Singh, were found in possession of 9 Kg. Opium, without any license or permit and the contraband was concealed behind the driver's seat of Truck, bearing registration No.PB-22-8258.

(3) Learned Counsel contends that petitioner is in custody since 12.04.2022; charges were framed on 05.01.2023 and out of total 16 prosecution witnesses, only 02 have been examined so far. Also cited judgment dated 04.05.2023, rendered by Hon'ble the Supreme Court in **Hasanujjaman & Ors. Versus The State of West Bengal, Special Leave to Appeal (Crl.) No.3221/2023.**

(4) *Per contra*, learned State Counsel on instructions opposed the prayer while submitting 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.—

(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, *interalia*, 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) 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 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) There is no doubt that Hon’ble the Supreme Court in **Hasanujjaman’s case** (*supra*) granted bail pending trial; but recovery in that case was 115 bottles (100 ml. each) of phensedyl. However, as already noticed, in the present case, recovery is alleged to be 9 Kg. Opium; thus, on facts, it is materially distinguishable and as such, not helpful to the petitioner at this stage.

(11) Apart that, charges have already been framed against the petitioner under Sections 18 & 29 of the NDPS Act and prosecution evidence is going on; therefore, this Court is not inclined to record the twin-test satisfaction in his favour 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) Needless to say that the observations made above shall not be construed as an expression of opinion on merits of the controversy in any manner.

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

15th July, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes