

2025:PHHC:033481



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM M-6478 of 2025

Date of Decision: 24.02.2025

Anil

...Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sandeep Verma, Advocate, for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.38 dated 07.07.2023 registered under Sections 21(c) and 29 of the NDPS Act, 1985 at Police Station Bajakhana, District Faridkot.

2. Learned counsel for the petitioner contends that as per the prosecution story, the petitioner alongwith other two co-accused, namely, Raj Kumar and Robin were apprehended in a Fortuner car, which was allegedly driven by the petitioner. He further contends that alleged recovery of 400 grams of heroin was effected from the Fortuner car without following the due process of the law and the mandatory provisions of Section 50 of the NDPS Act were not complied by the police and the petitioner deserves to be released on

bail. The petitioner is in custody since 07th July 2023 and challan has already been presented against him. The petitioner was never involved in any other crime and the conclusion of the trial may taken quite a long time.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that 400 grams of heroin was recovered from the car of the petitioner and the said quantity falls within the purview of “commercial quantity” and the bar contained under Section 37 of the NDPS Act would apply to the facts of the present case.

4. I have heard learned counsel for the parties and perused the record.

5. While considering the grant of concession of bail in the cases involving the recovery of “commercial quantity” of contraband from the accused, the Hon’ble Supreme Court has held in the matter of ***State of Kerala etc. Vs. Rajesh Etc., 2020(1) RCR (Criminal) 818: 2020 AIR Supreme Court 721*** as follows:-

18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite.

That provision makes the offences under the Act cognizable and non-bailable. It reads thus:—

“37. 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.”

(emphasis supplied)

*19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In **Union of India Vs. Ram Samujh and Ors. 1999(4) RCR (Criminal) 93: 1999(9) SCC 429**, it has been elaborated as under:—*

*“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death—blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v. Chief Secy., Union Territory of Goa [1989(2) RCR (Criminal) 505: [(1990) 1 SCC 95]** as under:*

24. With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament

in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent–accused on bail. Instead of attempting to take a holistic view of the harmful socio–economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”

20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non–obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to

oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. 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. 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. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

22. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act”.

6. In the present case, the police had recovered 400 grams of heroin from the Fortuner car, in which the petitioner was traveling and was arrested on 07.07.2023. Now, the report of the chemical examiner has been received and as per the report of the chemical examiner, the quantity recovered from the petitioner and his

co-accused was found to be containing the salt, which is known as Diacetylmorphine and the quantity of the contraband is commercial in nature. Thus, keeping in view the embargo contained under Section 37 of the NDPS Act, the petition deserves to be dismissed by this Court.

7. Dismissed.

24.02.2025	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No