

2025:PHHC:033431



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

CRM M-9782 of 2025

Date of Decision: 25.02.2025

Jeetu

...Petitioner

Versus

State of Haryana

... Respondent

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

Present : Mr. Akshit Mehta, Advocate, for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

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.163 dated 08.06.2023 registered under Sections 20 of the NDPS Act (Section 29 of NDPS Act added later on) at Police Station Dhauj, District Faridabad.

2. The FIR in the present case was registered on the basis of the statement made by Jagdish SI and the same has been reproduced below:-

“To, SHO, P.S Dhauj, Fairdabad, Jai Hind. Today, I SI along with head constable Amit No. 341, Constable Amit No. 1810, Constable Punit No. 1239 was present at Dhauj, Faridabad in Government vehicle No. HR51GV6546 along with Driver EHC Naresh Kumar

No. 373 for the purpose of crime prevention. Then the secret informer gave a secret information to me SI that, Jeetu S/o Mahender R/o village Kureshipur and his partner Amit R/o village Akalgarh, District Jind do the work of supplying Ganja in the Accent Car color white bearing No. HR26BD4408. That both the persons, after some time will go to the village Kureshipur by taking the Narcotics Substance (Ganja) in their Accent car bearing No. HR26BD4408 and if barricading is done on Fatehpur Taga to Bijopur road then both the person can be caught while possessing Ganja in their Accent Car. That after conveying the information to the co-officials, one Notice under Section 42 of NDPS Act was prepared and Constable Amit No. 1810 was sent to Police Station for the information and who came back from the Police Station Dhauj to the spot after 40 minutes after registering the Nakal Rapat bearing No. 48 dated 08.06.2023, and the copy of the Nakal Rapat bearing No. 48 dated 08.06.2023 is handed over to me. Thereafter, I went to Fatehpur Taga to Bijopur road on the government vehicle along co-officials and secret informer and after barricading we started conducting the search of the vehicles. After, 10-15 minutes, one Accent car of white colour was coming from the side of Bijopur and the secret informer confirmed that this is the car. Thereafter, we discharged the secret informer and tighten the barricading along the help of co-officials. After seeing the police barricading, the driver of the car started turning the car then I along with the help of co police officials caught the driver of the car along with his car, and the person sitting on the

conductor seat was caught by Constable Amit No. 1810. When I saw the number of the car, it was found that the car was bearing No. HR26BD4408. When I asked the name of the caught person, then he disclosed his name as Jeetu S/o Mahender Singh, R/o village Bajna, District Mathura, UP and who is presently resident village Kureshipur, PS Dhauj, Faridabad. The person caught by constable Amit disclosed his name as Amit S/o Jai Bhagwan R/o village Akalgarh, PS Julana, District Jind. When I opened the boot (Dikki) of the car then the Plastic Bags were found and the openings of the plastics bags were tied with a rope. I handed over separate Section 50 Notice to the each person as I was having the suspicion that the Plastic bags are filled with the Narcotics Substance (Ganja) and asked from them that whether they want to get their search conducted through from me or any Gazetted officer. Then both the persons gave their written consent to get the search of plastic bags to be conducted through Gazetted officer. Then I, called the Gazette officer appointed by the DC namely Ramesh Kumar DHO Faridabad from my mobile No. 9999223555 on his mobile No. 9996788121 and requested him to come on the spot. Thereafter, the duty Magistrate Ramesh Kumar came on the spot on his private vehicle after 30-40 Minutes and disclosed his name and designation to the caught persons and thereafter, conducted the separate search of each two Plastic Bags which was kept in the car and in the Plastic bags (Katta) Ganja was found. Thereafter, I arranged the Electronic Weighting Machine and separately measured the weight of the Plastic Bags

(Katta), Then in the first plastic Bags (Katta) total weight was found to be 18 Kg along with the weight of Plastic Bag and the weight of Ganja in the second Plastic Bag (Katta) was found to be 18 KG. When Duty Magistrate Sir asked any permit or document pertaining to the possession of the Ganja then they were unable to produce anything. Then I sealed the recovered Plastic Bags with the seal of JD and Duty Magistrate DHO affixed his seal BS. Then I handed over my seal to Constable Amit No. 1810 and DHO Sir kept his seal with himself. The total weight of the recovered Ganja along with the plastic bags was found to be 36 KG and the recovered Accent car bearing No. HR26BD4408 white color, was taken into police custody by way of memo for the purpose of evidences. Recovery memo was separately prepared. The recovery memo was signed by the accused as well as the witnesses. Duty Magistrate Sir, has seen the recovered Ganja and memo. The accused namely Jeetu and Amit abovementioned has committed the offences under Section 20-61-85 NDPS as they were possessing the narcotics substance Ganja in the boot of their car bearing No. HR26BD4408. The report was sent to Constable Puneet No. 1239 in the Police Station. An FIR to be registered against the accused and the second may kindly be sent, and special report may kindly be sent through to constable to the superior officials. The Duty Magistrate left from the spot and I am busy on the spot. Today: Fatehapur Taga, Bijopur Road Faridabad. SD/- Jagdish SI ENG Crime Branch PS NIT Faridabad Dt. 08.06.2023 at 8:30 PM)”

3. Learned counsel for the petitioner contends that the recovery of 36 Kgs of Ganja from two bags has been planted on the petitioner and his co-accused Amit. He further contends that even the copies of notice under Section 50 of NDPS Act (Annexures P-2 and P-3) would clearly show that the mandatory provisions of Section 50 of the NDPS Act were not complied by the police in the present case and the petitioner is entitled to bail solely on this ground. Moreover, the petitioner was arrested in the present case on 08th June, 2023 and challan has already been presented against him. Further, the petitioner was never involved in any other case under the NDPS Act and the petition deserves to be allowed by this Court.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that it is the fourth petition under Section 439 Cr.P.C. on behalf of the petitioner and earlier three bail petitions have been dismissed by this Court. In fact, there has been no change of circumstances and the present petition deserves to be dismissed by this Court.

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

6. In the present case the police had stopped the car, in which the petitioner alongwith co-accused Amit was traveling. The petitioner was driving the car, whereas his co-accused Amit was

sitting on the side seat. Two plastic bags were recovered from the vehicle and 36 Kgs *Ganja* was recovered from the two bags. Even, the recovery was made from the two bags and the provisions of Section 50 of the NDPS Act would not come into the way in view of the law laid down by the Hon'ble Supreme Court in the matter of ***State of Punjab Vs. Baldev Singh, AIR 1999 SC 2378***. In fact, the provisions of Section 50 of the NDPS Act would apply only in cases of search of a person as distinguished from the search of any premises, vehicle etc., thus, the submissions made by the learned counsel for the petitioner are deserved to be rejected by this Court.

7. Moreover, 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”.

8. In view of the above discussion, the present petition is ordered to be dismissed.

25.02.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No