



CRM-M-12111-2025
DECIDED ON: 28.03.2025

....PETITIONER

VERSUS

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Premjit Singh Hundal, Advocate
Mr. Gursahib Singh Hundal, Advocate and
Ms. Arshpreet Kaur, Advocate
for the petitioner.

Mr. Surender Singh Pannu, Addl. AG, Haryana

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of Regular Bail to the petitioner in case FIR No. 258, dated 08.08.2024, under Sections 22-C, 25 and 29 NDPS Act, 1985 registered at Police Station Kunjpura, Karnal.

2. Facts

The prosecution story as set up in the present FIR reads as under:-

“To The S.H.O., P.S., Kunjpura, "Jai Hind". Today, I (Sub-Inspector) along with E.S.I. Satish Kumar No. 946, E.S.I. Narender Singh No. 943, H.C. Ravinder Singh No. 775 and H.C. Satish Kumar No. 1320 was going to Village Gheer via Karnal, Sai Baba Mandir Chowk, Nur Mahal Chowk, Budha Khewar and Neval in Government vehicle No. HR-05-GV- 3961 TAVERA Make with Driver S.P.O. Dalbir Singh No. 125 from the Narcotic Cell, Sector 6, Karnal in connection with

general patrol and checking of crime. When we were five or six Killas short of Village Gheer a secret informer met me and gave information at 11.30 p.m. that Shahrukh son of Jabir son of Yunus resident of Kunda Khurd, P.S. Gangoh, District Saharanpur and Sajid son of Babu son of Fazar, resident of Kunda Kalan, P.S. Gangoh, District Saharanpur are indulging in purchase of Narcotics from Uttar Pradesh on cheap rates and sell the same in Haryana at inflated rates and that they are coming towards Village Gheer from Uttar Pradesh on Motor Cycle No. HR-05-AN-1460 of HERO Splendor Make of Silver shade with narcotic drugs prohibited under the N.D.P.S. Act in huge quantity in a cardboard box and if ambush is held near T-Point on the Gheer-Shergarh Tappu Road they can be arrested with their Motor Cycle and Narcotic Drugs. He further told that Shahrukh was wearing a Capri of Black colour with White shirt and that Sajid was wearing Shirt of Cream colour and Pyjama of White colour and that Sajid was driving a Motor Cycle and that Shahrukh was sitting on the pillion with the cardboard box containing narcotic drugs. Since the information was reliable the companion officials were informed about it and a raiding party was prepared, the informer was allowed to go. I along with E.S.I. Narender Singh No. 943, H.C. Ravinder Singh No. 775 and H.C. Satish Kumar No. 1320 am going to T-Point Shergarh Tappu-Gheer Road. Notice under Section 42 N.D.P.S. Act was prepared and is being sent to the Police Station through E.S.I. Satish Kumar No. 946. Information be recorded in the Daily Diary and Senior Officers may be informed. When I reached the spot along with my companions, I saw two persons sitting on a Motor Cycle at T-Point Shergarh Tappu-Gheer Road on the Pacca Road under street lights. The front of the Motor Cycle was towards the Karnal-Biana Road. A Card Board box was seen between the two persons, who were overpowered by me with the help of my companions. On enquiry made by me, the Driver of the Motor Cycle disclosed his name as Sajid son of Babu son of Fazar, resident of Kunda Kalan, P.S. Gangoh, District Saharanpur and the person sitting on the pillion told his name as Shahrukh son of Jabir son of Yunus, resident of Kunda Khurd, P.S. Gangoh, District Saharanpur. The key of Motor Cycle with No. HR-05-AN-1460 Splendor HERO Make of Silver shade was taken into possession. Firstly notices under Section 50 of N.D.P.S. Act were issued to Driver Sajid and then to pillion rider Shahrukh. Then I informed them that I had secret information that the Card Board box being carried by them was having Narcotic Drugs in it and that you are in the business of selling Narcotic Drugs prohibited under the N.D.P.S. Act. You have a legal right that you can get your person and Card Board box searched in the presence of a Gazetted Officer or some Magistrate and that any Duty Magistrate can be called to the spot and that they were given 10 minutes time to think over the matter. Notices under Section 50 of N.D.P.S. Act were separately prepared, the same were read over and explained to them and after having heard and understood the notices accused Sajid and

Shahrukh signed the Notices which were also attested by the witnesses. At that time, 8-10 persons who were going on the road were stopped and requested to join the investigation, but all of them showed their helplessness and left the spot without disclosing their names and addresses. However, one of them disclosed his name as Sartaj Singh son of Daler Singh, resident of Street No. 5, House No. 1177, Vasant Vihar, Karnal who was also joined the investigation. In the meanwhile, E.S.I. Satish Kumar No. 946 returned from the Police Station, Kunjpura and reached the spot and he handed over a copy of the Daily Diary Entry showing receipt of information from the Notice under Section 42 of N.D.P.S. Act which was taken on the file by me. After about 10 minutes, both the accused namely Sajid and Shahrukh were asked to reply the Notices who thought over the matter and told me that they had considered the notices issued to them and that they do not want the search of Card Board Box conducted in the presence of a Gazetted Officer and that they asked me to take any action against them according to law they would be having no objection and that they had full faith upon me. Again Notices under Section 50 of the N.D.P.S. Act were separately prepared which were signed by Sajid and Shahrukh accused and attested by the witnesses. A Video of the spot was also prepared by using my own Mobile Phone. Thereafter, I checked the Card Board Box held by Shahrukh son of Jabir, resident of Kunda Khurd, P.S. Gangoh, District Saharanpur and recovered 18 packs of Tramadol Capsules. I sent the Photo of Tramadol Capsules to the Drug Inspector, Karnal, namely, Shri Vikas Rathi on my telephone and asked him about the Capsules who gave me information that these Drugs were prohibited under the N.D.P.S. Act and that I can obtain his opinion in writing later. On 14 small packs out of 18 packs of Tramadol, Mfg. Lic. No. 43/UA/2007, Batch No. 240708, M.R.P. 76.00, Mfg. JUN 2024 PER, 8 Caps. Exp. JUN 2026 incl. - all taxes Mfgd. and Mktd. By SOUL Health Care (I) Private Ltd., AN-ISO-001-2015 and GMP, GLP certified Company - 7 Km., Jaspur Road, Kashipur - 244 713 (U.K.) was printed on every strip. One small pack was having 10 strips and one strip contained 24 Capsules. There were 240 Capsules in the small pack and the four small packs were having 960 Capsules of Tramadol. The Capsule was weighed on the Electronic Scale and the weight came to be .56 Milligram - All the 4,320 Capsules weighed 2 Kilograms 419 Grams 2 Milligrams. The Capsule was put in the same strip and closed by a tape. All the Tramadol Capsules were put in the same Card Board Box, it was put in a cloth parcel which was tied by a string and sealed with the seal of 'SR/3'. Sample Seal was separately prepared. The seal after use was handed over to H.C. Ravinder Singh No. 775. The Tramadol Capsules with sample seal, the Motor Cycle and its key were taken into Police possession vide a separate Seizure Memo. This was signed by Shahrukh and Sajid and

attested by the witnesses. By keeping in their possession 4,320 Tramadol Capsules weighing 2 Kilogram 419 Gram - 2 Milligram without any Permit or License, both Shahrukh and Sajid have committed offences under Section 22-C/25 of N.D.P.S. Act. A 'Ruqa' was reduced into writing against them and the same is being sent to the Police Station through E.S.I. Satish Kumar No. 946. A case may be registered and F.I.R. number may be intimated. Special Reports be issued and sent to Senior Officers and some Investigating Officer be sent to the spot for carrying out the investigation. I along with my companions and the case property am present on the spot along with the accused. In the area of Village Gheer sd/-E./S.I. Singh Raj, Anti-Narcotic Cell, Karnal, 08.08.2024 at 06.50 A.M., M.B. No. 85292-32211."

3. **Submissions**

On behalf of the Petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case on the basis of disclosure statement suffered by the co-accused who were arrested on the spot and except that no incriminating material has been found against the present petitioner. He further contends that the recovery i.e. 4320 capsules of Tramadol has been effected from the co-accused Sajid and Shahrukh.

On behalf of the State.

Learned state counsel has produced the custody certificate which is taken on record. He prays for dismissal of the bail by submitting that the contraband i.e. 4320 capsules of Tramadol falls under commercial quantity and the name of the petitioner came out in the disclosure statements of the co-accused namely Sajid and Shahrukh who alleged that they supplied those capsules to the present petitioner. Thus, the petitioner is not entitled to be released on regular bail.

Heard learned counsel for the respective parties at length.

5. **Analysis**

As has been culled out from the facts of the present case, the petitioner has been nominated on the basis of disclosure statement suffered by co-accused

Sajid and Shahrukh, who has candidly stated that the recovered contraband i.e. 4320 capsules of Tramadol was to be supplied to the present petitioner, meaning thereby, the petitioner is the main accused who is indulged in illegal activities. Moreover, the recovered contraband falls under the commercial quantity, which attracts Section 37 of the NDPS Act, 1985.

Exercise of power to grant bail is not only subject to limitations contained under section 439 of Cr.P.C., 1973 (Section 483 of BNSS, 2023) but is also subject to limitations placed by Section 37 of the 1985 Act. No person can be enlarged on bail for offences enumerated under Section 37 of the 1985 Act unless twin conditions embodied therein are satisfied. The finding mandated under Section 37 of the 1985 Act in this regard is a sine qua non for granting bail to the accused under the 1985 Act. Section 37 of the 1985 Act, which legislates the offences under the 1985 Act to be cognizable and non bailable and embodies the limitations on grant of bail for the specified offences, reads as under:-

“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 3 [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.”

In Union of India Vs. Rattan Mallik @ Habul : (SC) : 2009(1)

R.C.R. (Criminal) 938 Hon'ble Supreme Court observed as under:-

“13. It is plain from a bare reading of the nonobstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the Narcotic Drugs And Psychotropic Substances 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 sub-clause (b) of sub-section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances 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". 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. Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the Narcotic Drugs And Psychotropic Substances Act.”

With deep concern, this court has time and again pointed out the clandestine smuggling of narcotic drugs and psychotropic substances in the State of Punjab which have led to drug addiction among sizeable section of the public, particularly adolescents and students and this menace has assumed serious and alarming proportion in the recent times.

This rising concern needs an efficacious solution. To effectively address the drug menace, the concerned State Government should develop integrated policies that addresses the root cause of drug abuse, incorporating health, education and social welfare sectors. A glimpse at Article 47 of the Constitution of India (One of the Directive based on Socialistic Principles) makes it ample clear that it is the for the state to look into the improvement of public health and the prohibition of harmful substances. Also, the porous borders, high demand for drugs

and evolving smuggling tactics demands constant vigilance and adaptation from the police and other law enforcement agencies.

6. Conclusion

In the considered opinion of this court, the petitioner needs to be dealt with firmly and sternly and no sympathy can be shown lest that could prove to be counter productive and result in increased drug trafficking.

Hence, looking into the facts of the present case and the gravity of the offence , the petition stands dismissed.

However, it is made clear that the observations made herein above shall have no bearing in the mind of the trial court while adjudicating the matter in accordance with law.

28.03.2025
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(SANDEEP MOUDGIL)
JUDGE

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