

2025:PHHC:025461



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(216)

CRM-M-29938-2024

Date of decision: 20.02.2025

Mithun Mandal

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr.Harpreet Singh Rakhra, Advocate for the petitioner.

Ms.Manjot Kaur, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present third petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), for grant of bail pending trial to petitioner in FIR No.201 dated 17.11.2022 under Section 18 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'NDPS Act', registered at Police Station GRP Ludhiana, District Government Railway Police, Ludhiana.

2. Allegations are that petitioner was apprehended on 17.11.2022 at Railway Station, Ludhiana, and 2 kgs 600 grams of *opium* was recovered from his bag, without any permit or licence.

3. Contends that petitioner is in custody since 17.11.2022 and has been falsely implicated in the present case by the police. Further contends that police report under Section 173(2) of Cr.P.C. has been presented before the Special Court; charges have been framed and out of 15 prosecution witnesses, only one has been examined till date; thus, conclusion of trial will take sufficient long time.

4. *Per contra*, learned State Counsel opposes the prayer on the ground that recovery is commercial in nature. Thus, in view of the embargo contained under Section 37 of the NDPS Act, petitioner is not entitled for bail pending trial.

5. Heard learned counsel for the parties and perused the paper-book.

6. As per the allegations of prosecution, recovery against the petitioners is 2 kgs and 600 grams of opium, which is commercial in nature and cases of narcotics are increasing day-by-day in the State of Punjab; therefore, keeping in view the embargo under Section 37 of the NDPS Act, this Court is not inclined to grant concession of bail in favour of the petitioner.

7. At this stage, 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 subsection (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, is in the nature of non-obstante clause and which, *inter alia*, lays down that no person accused of an offence punishable under Section 19 or Section 24 or Section 27A of NDPS Act and also offences 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. In view of the above, this Court is not inclined to record the twin test satisfaction in favour of the petitioner as per Section 37 of 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 Vs. State of Punjab, SLP (Crl.) 12601-2023**, decided on 14.12.2023, has

“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 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. In view of above and considering the seriousness of the allegations levelled against the petitioner, there is no option, except to dismiss the petition, at this stage.

13. Ordered accordingly.

14. 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.

20.02.2025
sailesh

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned :

Yes/No

Whether Reportable :

Yes/ No