

2025:PHHC:033381



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

CRM M-38998 of 2024 (O&M)

Date of Decision: 05.03.2025

Pardeep Kaur

...Petitioner

Versus

State of Punjab

... Respondent

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

Present : Mr. L.S. Sekhon, Advocate, for the petitioner.

Mr. Deepinder Singh Brar, Sr. 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.11 dated 17.01.2024 registered under Sections 21, 22 and 29 of the NDPS Act, 1985 at Police Station City Sunam, District Sangrur.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner has been falsely involved by the police as she failed to fulfill demand of illegal gratification of the police. In fact, the petitioner had given birth to her second child on 09.12.2023 and the present case was lodged on 17.01.2024. Thus, it was highly improbable that a lady would get involved in a drug case after a period of 38 days from the date of delivery of her child. Still further, the police had wrongly planted the recovery of 800 tablets of

tramwell and 03 grams of heroin on the petitioner and the petition is liable to be allowed by this Court.

3. On the other hand, learned State counsel has filed a status report by way of an affidavit of the Deputy Superintendent of Police, Sub-Division Sunam, District Sangrur and the same is taken on record.

4. Learned State counsel has relied upon paragraphs 2 and 3 of the status report, which have been reproduced below:-

“2 That pursuant to the said order, it is submitted that the brief facts of case/FIR No. 11 dated 17.01.2024 u/s 21, 22, 29 NDPS Act, P.S., City Sunam are that on 17.01.2024 a police party headed by A.S.I. Sat Parkash 763/SGR P.S. City Sunam in connection with patrolling and checking of suspected persons, was present at Peeran Wala Gate, Sunam, at about 3:30 PM, the secret informer gave him information that Yograj Singh @ Yoga son of Kala Singh resident of Stadium Road, Indra Basti Sunam, who brings the Heroin/chitta and intoxicant tablets at cheaper rates and used to sell the same in area of Sunam in connivance with his wife Pardeep Kaur. Even today, Pardeep Kaur wife of Yograj Singh @ Yoga above said is coming to Nilowal at minor canal bridge in the area of Sunam for selling the heroin/chitta and intoxicant tablets to her customers brought by her husband Yograj Singh @ Yoga. If a raid is conducted at minor drainage bridge on Nilowal Road, Sunam, then Pardeep Kaur can be apprehended along with heroin/chitta and intoxicant tablets. The

information is solid and reliable. Yograj Singh @ Yoga by bringing heroin/chitta and intoxicant tablets from outside and hanging over the same further to his wife Pardeep Kaur and Pardeep Kaur by selling the same have committed offence under sections 21, 22, 29/61/85 NDPS Act. Therefore, ASI Sat Parkash by sending a ruqa to the police station got registered the present FIR against Yograj Singh @ Yoga and Pardeep Kaur. ASI Sat Parkash prepared report u/s 42 NDPS Act and sent to the Senior Officers.

3. That during the investigation, ASI Sat Parkash alongwith police party reached near canal bridge at Nilawal road, Sunam and tried to get some independent witness joined the investigation, but no one was found available. Then a lady was seen coming from the Sunam side through canal pavement holding a polythene envelope in her right hand, who got perplexed and threw the polythene envelope on the pavement of canal and tried turn back, however, ASI Sat Parkash apprehended that lady with the help of lady Constable Kiranjit Kaur No.1548/SGR and other co-officials and asked about her name and address, who disclosed her name as Pardeep Kaur wife of Yograj Singh @ Yoga son of Kala Singh, resident of Stadium road, Indra Basti, Sunam. Due to the open mouth of the envelope, some strips of intoxicant tablets and also the transparent envelope containing heroin/chitta fell on the ground and the intoxicant tablets were clearly visible. On counting, 80 strips of intoxicant tablets, 10 tablets in each strip, total 800 tablets, marka Tramadol Prolonged-Release tablets IP TRAMWEL SR-100 were recovered. Batch number on each strip has

been found erased. From the transparent lifafi, heroin/chitta was recovered and on weghment it came to be 3 grams heroin/ chitta. Parcels of recovered 800 intoxicant tablets and 3 gram heroin were prepared and sealed by ASI Sat Parkash with his seal SP and specimen of seals were prepared separately”.

5. The learned State counsel has vehemently argued that on getting the secret information, the petitioner was arrested and 800 tablets were recovered from her and as per the report dated 20.02.2024 received from the FSL, the following ingredients were found in the tablets:-

Envelope No.1: *was containing Eight hundred (800) white coloured tablets packed in eighty (80) strips, each strip was lebelled as 'TRAMWEL SR 100 (Tramadol Prolonged Release Tablets IP) Mfd. by Pure and Cure Healthcare Pvt. Ltd.*

Average weight = 381 mg/tablet.

Envelope No.2: *was containing Three (3) grams of brown coloured lumpy material packed in a plastic container (Dabbi)*

<i>Tramadol Hydrochloride</i>	<i>Found present in the tablets contained in the envelope No.1.</i>
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<i>Diacetylmorphine</i>	<i>Found present in the contents of the envelope No.2.</i>
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<i>Quantity of Diacetylmorphine</i>	<i>44.25%</i>
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Consequently, the recovery of contraband from the petitioner falls within the ambit of commercial category. Learned State counsel submits that apart from the present case, two more FIRs have been found to be registered against the present petitioner, which are as under:-

- “1. FIR No. 259 dated 12.11.2022 u/s 21, 29 NDPS Act, P.S. City Sunam. This case is under trial.
2. FIR No. 08 dated 06.02.2023 u/s 21, 29 NDPS Act, P.S. Dharamgarh. This case is under trial”.

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

7. 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 the present case also, it is apparent that 800 tablets of Tramadol Hydrochloride were recovered from the present petitioner and total weight of 800 tablets was found to be 304.8 grams and the recovery falls under the commercial quantity. Apart from that, it is apparent from the record, the petitioner is a habitual offender and was also found involved in two more cases in the district. Still further, the

other arguments raised by the learned counsel for the petitioner have been seriously disputed by the learned State counsel also and this Court is not making any observation in this regard as the defence of the petitioner may be prejudiced before the trial Court. In fact, the recovery of Tramadol Hydrochloride from the petitioner falls within the purview of commercial quantity and keeping in view the bar contained under Section 37 of the Act, the petitioner is not entitled to concession of regular bail.

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

10. All pending applications, if any, are disposed off, accordingly.

05.03.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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