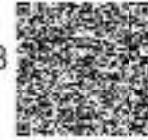


2025PHHC:016323



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

CRM-M-47056-2024
Date of Decision: 03.02.2025

Rakesh Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Jagjit Singh Gill, Advocate
for the petitioner,

Mr. Sharan Sethi, Addl. A.G., Haryana.

HARSH BUNGER J. (ORAL)

This is second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Rakesh Kumar) for grant of regular bail in case bearing FIR No.53 dated 29.01.2022 (Annexure P-2) under Sections 20(C), 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act'), registered at Police Station City Sirsa, District Sirsa.

2. The first bail petition (CRM-M-41264-2022) was dismissed as withdrawn vide order dated 24.04.2023 (Annexure P-3) passed by this Court.

3. Custody certificate dated 31.01.2025 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Succinctly, the aforesaid FIR (Annexure P-2) was registered on the complaint of Assistant Sub Inspector Harmeet Singh, who stated that on 29.01.2022, when he, along with fellow officials, was patrolling in a government vehicle for checking the suspicious elements then a secret information was received that Vinod Kumar @ Bodi and Rakesh Kumar were carrying huge amount of *ganja* on their Scooty (make Hero Maestro; red colour), bearing registration No.HR-24AC-0276, and were coming to sell the same near water works towards J.J. Colony, Sirsa. Finding the information reliable, the Assistant Sub Inspector Harmeet Singh along with the police party reached the spot and led barricading. After some time, a two-wheeler was seen coming from the south side, on which two persons were sitting; whereupon they were signaled to stop the Scooty; who, upon seeing the police party got perplexed and tried to turn back the Scooty but the vehicle stopped due to some technical snag. Thereafter upon asking, the driver of Scooty disclosed his name Vinod Kumar @ Bodi and the pillion rider told his name Rakesh Kumar @ Gandhi (petitioner).

4.1 After following the due procedure, the search of aforesaid both persons along with their Scooty and bags was carried out, whereupon 20 kilograms of *Ganja* was recovered from each bag of the said two persons (in total 40 kilograms of *Ganja*). Thereafter, the recovered contraband was sealed and the same, along with Scooty, was taken into police possession.

5. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case. It is contended that co-accused, namely Sonu and Rajesh Kumar, have already been

granted the concession of regular bail by this Court vide orders dated 26.08.2022 (Annexure P-4) and 28.05.2024 (Annexure P-5) passed in CRM-M No.11463 of 2022 and CRM-M No.58096 of 2023, respectively. Learned counsel submits that the petitioner is in custody since 29.01.2022 in the present case; challan already stands presented and out of total thirty six prosecution witnesses, only three prosecution witnesses have been examined, so far; thus, the trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. Learned counsel contends that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court.

5.1 With the aforesaid submissions, learned counsel for the petitioner has prayed for grant of regular bail to the petitioner.

6. Per contra, learned State counsel has opposed the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offences. It is submitted that *Ganja* weighing 40 kilograms has been recovered in this case, which falls under the category of “Commercial Quantity” and thus the bar under Section 37 of the N.D.P.S. Act would be attracted. While referring to the custody certificate, learned State counsel has submitted that the petitioner does not acquire clean antecedents as besides the present case, he is also involved in four more cases of similar nature, however, he is on bail in the same; which fact is also not disputed by learned counsel for the petitioner. Learned State counsel further states that there is an apprehension that in the event of grant of bail, the petitioner may abscond to delay the trial. Accordingly, prayer has been made for dismissal of the present petition.

7. I have heard learned counsel for the parties and perused the

paper book as well as the custody certificate of petitioner.

8. Admittedly, the recovery of 40 kilograms of *Ganja* has been effected in this case from the petitioner and one Vinod Kumar; which falls under the category of “Commercial Quantity” and thus rigors of Section 37 of the N.D.P.S. Act are attracted. The Hon'ble Supreme Court of India in ***“State By The Inspector of Police v. B. Ramu”, 2024(1) Law Herald (SC) 366***, observed as under: -

“6. From the order reproduced supra, it is apparent that the learned Single Judge totally ignored the submission of the Public Prosecutor that the respondent-accused was arraigned in three more previous cases (two of which involve offence under the NDPS Act). Furthermore, the learned Single Judge also totally ignored the fact that the recovered ganja was well in excess of the commercial quantity as provided in the schedule to the NDPS Act.

7. During the course of submissions, learned counsel for the respondent vehemently and fervently contended that during the intervening period, the matter has progressed much ahead inasmuch as the investigation has been concluded and charge-sheet has been filed. Now the matter is posted for framing of charges against the accused.

8. Section [37](#) of the NDPS Act deals with bail to the accused charged in connection with offence involving commercial quantity of a narcotic drug or psychotropic substance. The provision is reproduced hereinbelow for the sake of ready reference:-

“[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]"

9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather completely ignored the factum of recovery of narcotic substance (ganja), multiple times the commercial quantity. The High Court also failed to consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.

11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in a case involving

recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act...”

9. In the instant case, there is nothing on record to enable this Court to record *prima facie* satisfaction for believing that petitioner is not guilty of the offences or that he will not commit any offence while on bail; moreso, when he does not have clean antecedents as he being involved in four more cases of similar nature.

9.1 A co-ordinate Bench of this Court has dismissed the regular bail petition of Vinod Kumar, who was arrested along with petitioner, vide order dated 17.01.2025 passed in CRM-M No.4912 of 2024.

9.2 So far as the concession of regular bail granted to co-accused is concerned, the same would also be of no help, for the simple reason that both of them were nominated on the basis of disclosure made by petitioner as well as co-accused Vinod Kumar.

10. Furthermore, the apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to abscond to prolong the matter, cannot be brushed aside lightly.

11. It is a matter of common knowledge that drug menace is ruining the lives of many of the young people. The drug peddlers, for their own monetary gains, are misleading the youth towards drugs consumption, which is not only affecting these young people but is also affecting their families. The drug menace and the drugs peddlers are required to be dealt with stern and firm hands.

12. Hence, keeping in view the aforementioned circumstances, I do not deem it fit to extend the concession of regular bail to the petitioner at this stage. Accordingly, the present petition is dismissed.

13. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.
14. All the pending application(s), if any, shall also stand closed.

03.02.2025
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No