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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64981-2024
DECIDED ON: 10.01.2025

JOGINDER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Piyush Sharma, Advocate
for the Petitioner

Mr. J.S.Rattu, DAG, Punjab

SANDEEP MOUDGIL, J (ORAL)**Relief Sought**

1. The jurisdiction of this Court has been invoked for the second time under Section 483 of the BNSS, 2023, for grant of regular bail to the petitioner in case FIR No. 246 dated 22.12.2023(Annexure P-1) under section 21/29 of Narcotics Drugs and Psychotropic Substances Act 1985,(hereinafter referred as NDPS Act) registered at Police Station Sadar Fazilka, District Fazilka

2. The FIR is reproduced herein below :

*No. Ops/D/55 Bn/FIR/2023/415-16 Office of the Coy Commander
'D' Coy 55 BN BSF, BOP- Sowarwali Dated the 22 Dec 2023 To,
the Station House Officer Police Station Sadar Fazilka. (Punjab)
Sub:- To lodge FIR regarding movement of suspected flying
object, firing thereof and recovery of one PKT (Suspected to be*



heroine) in AOR of BOP Sowarwali Ex 55 BN BSF It is submitted that on 21th Dec 2023, at about 2134 hrs. forward deployed troops in HIT No. 2 (consisting of No. 071281988 C1 Debajit Bardoli & No. 102550472 Ct Murtuza Ansari) heard humming/buzzing sound of a suspected flying object coming from Pak side (BP ref. 263/4) in AOR of BOP Sowarwali Ex. 55 Bn BSF but couldn't able to identify the exact direction of flying object. HIT party immediately informed the Off Coy Commander No. 10009948 Insp Vishram Meena through Coy exchange. At about 2136 hrs Off Coy Insp Vishram Meena informed at once to Depth Naka (Consisting of No. 040050719 Ct Kamal Masih & 020050076 HC/Dvr Dalip Chand) which was already laid at Choke Point No. 2 and simultaneously informed to ADS for spoofing also however no early detection of flying object was reported by ADS Team. Similarly Coy Comdr informed to Sh. Naresh Kumar Aggarwal DC (Adj) as well as Sh Subheg Singh DSP Fazilka. Off Coy Commander along with QRT (Consisting No. 050011861 Insp Mool Chand Jat. No. HC/Dvr Raju Kumar Pradhan & No. 95000145 HC (G) Pyarelal immediately rushed towards suspected dropping area and choke Point No. 02. Meanwhile Depth Naka deployed at Choke point No. 02 heard the sound of suspected flying object and on hearing the sound No. 040050719 Ct Kamal Masih fired 02 rounds (KF-19) from his 5.56 Insas Rifle (Butt No. 386 comma body no 18753028) in the direction of flying object and after the firing, sound of the flying object was posed & disappeared from the area. All choke points were covered. Depth Naka and QRT team cordoned the suspect dropping area and started search of area. During the search of area one yellow color wrapped packet with thin pipe type radium suspected to be contraband item of approx weight 530 grms heroin was recovered from the area. Sh. KN Tripathi, Comdt 55 BN BSF a/w Sh Naresh Kumar Aggarwal, DC (Adj) & QRT teams of Bn HQrs team also reached at the P.O.O. Immediately



from Bn HQrs and Dy. SP Subeg Singh along with 08 police personnel also reached on the spot. Further detailed search ops led by Sh KN Tripathi, Comdt 55 BSF BSF a/w Sh. Naresh Kumar Agarwal DC (Adj). Off Coy Commander Insp Vishram Meena. Insp (G) of unit along with 04 SOs & 41 ORs and police party carried out w.e.f. 220715 hrs to 220930 hrs and no item recovered. EFC not recovered and suspected contraband item has been handed over to SHO Sadar Fazilka on proper seizure memo. 3.P.O.O. BP ref 263/4-S. Distance from IB 2.5 Kms, distance from BS fence 2.350 Kms approx. Distance from BOP Sowarwali 2.5 Kms approx. Distance from Pak Post Jagga Chistti 2.5 Kms approx. Distance from ADS Sowarwali 2.5 Kms. 4. Therefore, it is requested to lodge an FIR against the unknown miscreants. Investigation may be done at your end and outcome of the investigation may be intimated to this HQ for our record and further necessary action please. A copy of FIR also be provided for our record also. Thanking you. Enclose i) Seizure Memo ii) Sealed one Pkt of suspected item Sd/- (Insp Vishram Meena) Off Coy Commander 'D' Coy 55 BN BSF dated 22.12.2023.'

Submissions

On behalf of the Petitioner

3. Learned counsel for the petitioner argues that the petitioner has been falsely implicated in the instant case wherein it has been falsely projected by the police to have recovered 530gms of 'heroin' supplied from Pakistan to the petitioner. He further argues that no recovery was effected from the conscious possession of the petitioner at the time of arrest wherein he has been facing unnecessary harassment being in custody for almost 11 months therefore it is a valid case for granting the concession of Regular bail.

4. Notice of motion.



On behalf of the State.

5. On the asking of Court, Mr. J.S.Rattu, who is present in the court accepts notice on behalf of respondent-State and has filed the custody certificate which is taken on record. At the very outset he contends that the contraband recovered is 530 gm of heroin which is way more higher than the commercial quantity added with the fact that earlier the petitioner was granted interim bail taking a sympathetic view in CRM-M No. 29052 of 2024 vide order dated 11.06.2024 for two weeks. Since the challan stands presented on 11.06.2024 and charges are yet to be framed, there are chances that the petitioner might tamper with the evidence so the present petition should be dismissed.

6. Heard learned counsel for the respective parties at length.

Analysis

7. As a developing economy, India has multiple socio-economic challenges associated with Drug usage such as consumption of opium, hash and heroin which are of concern as India shares its borders with Seven countries which makes it porous for illegal drug trafficking.

8. The Attari-Wagah route between India and Pakistan is the most prominent route for the illegal trafficking for host of factors such as agricultural land, trains upto the borders and various riverine portions. This well oiled machinery of drug circulation creates a massive illicit market, amplifies social conflict, breeds corruption and above all encourage drug consumption.

9. From the instant case it culls out that recovery of 530 gms of heroin allegedly have been received from Pakistan by the petitioner on 27.12.2023



and he is in custody since 31.12.2023 wherein he was granted interim bail in CRM-M No. 29052-2024 vide ordre dated 11.06.2024 for two weeks; challan stands presented on 11.06.2024 and charges are yet to be framed.

10. While addressing the objectives of the NDPS Act, the Hon'ble Supreme Court in the case of ***Durand Didier v Chief Secretary, Union Territory Of Goa (1990) 1 SCC 95*** emphasized that the rampant issue of clandestine smuggling and illegal trafficking of drugs and substances has led to widespread drug addiction, particularly among adolescents and youth. This has had a harmful and devastating impact on society. With grave concern, it was noted that the organized activities of criminal groups and the illegal importation of narcotic drugs and psychotropic substances into the country have caused a significant increase in drug addiction, especially among young people and students, affecting both genders. The menace has grown to alarming proportions in recent years. Consequently, to effectively combat and eliminate this growing threat, which is causing severe and harmful effects on society as a whole, Parliament, in its wisdom, enacted the NDPS Act of 1985, introducing provisions that mandate minimum imprisonment and fines for such offences.

11. 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.”

12. ***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."

Hon'ble Supreme Court has also held in ***State of Kerala Vs.***

Rajesh (SC) : 2020 (1) R.C.R.(Criminal) 818 that in the matter of grant of bail in cases under the NDPS Act liberal approach is uncalled for.

Conclusion

13. From the facts of the instant petition coupled with the spectrum of menace rising in the society which is not only decaying the youth of the country but is also contributing in to deteriorate the economy of the country, the court is of the stern view that drug peddlers should not be dealt with leniently.

14. In the light of above stated discussion, this court find it appropriate to dismiss the petition.



15. 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.

10.01.2025
Anuradha

(SANDEEP MOUDGIL)
JUDGE

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