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2025:PHHC:006923



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61713-2024
DECIDED ON: 14.01.2025

HARPREET SINGH @ HAPPY

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sukhbir Maandi, Advocate for
for the petitioner.

Mr. J.S Rattu, DAG, Punjab

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C for grant of Regular Bail to the petitioner in case FIR No. 116 dated 29.11.2023 u/s 21(c) of NDPS Act 1985(Section 29/61/85 of NDPS Act vide Rapat No. 25 dated 01.12.2023 added later on) at Police Station Khem Karan, District Tarn Taran.

2. That the brief facts of the case are that 29.11.2023, when the Police party in search of bad elements reached at bridge drain Village Duhal, then two persons were seen coming on road from fields and on seeing the police party, they took out two plastic bottles from right pocket of their pants and threw the same on the ground, both the persons were apprehended on the basis of suspicion, who on enquiry, disclosed their name as Harpreet Singh alias Happy son of Jagir Singh and

Jugraj Singh son of Jagir Singh. From the plastic bottles thrown by Harpreet Singh alias Happy on the ground, 255 Grams Heroin was recovered whereas, 260 Grams Heroin was recovered from the plastic bottles thrown by accused Jugraj Singh. On the basis of these allegations, the present FIR was registered against the present petitioner and co-accused Jugraj Singh.

Submissions

On behalf of the Petitioner

3. Counsel for the petitioner contends that the petitioner has been falsely implicated in this case wherein no incriminating material has been recovered from the possession of the petitioner. He further argues that the quantity allegedly recovered is marginal above from the commercial quantity added with the fact that petitioner has been falsely roped in only to settle the political grudge with him.

It is argued by the counsel for the petitioner that non compliance of the provisions under Section 50 of NDPS Act renders the whole story fabricated as to while effecting the recovery of contraband, the officer did not comply with the procedure prescribed under this section.

On behalf of the State.

5. 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 effected is of commercial quantity and during the investigation, it has come forth that the said heroin was smuggled by Pakistani smuggler, namely Shah Ali. Therefore, at this stage it would not be apposite to grant the concession of regular bail wherein custodial interrogation is necessary to unveil the master mind supplying such contraband from international border. Thus, the petitioner is not entitled to be released on regular bail.

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

Analysis

7. As has been culled out from the facts of the present case, the petitioner along with the co-accused was found to be carrying 515 gm heroin collectively in two plastic bottles in the field and during investigation it was revealed that the contraband so recovered was smuggled by a Pakistani named Shah Ali.

8. Exercise of power to grant bail is not only subject to limitations contained under section 439 of Cr.P.C., 1973 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.”

9. ***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.”

10. Moving further with the contention raised by the counsel for the petitioner for not complying with the provisions of Section 50 of the NDPS Act, it is a settled proposition of law that this provision has been included in the statute with a protective intent against malicious prosecution, especially keeping in view the stringent nature of the penal provisions under the NDPS Act. In absence of this safeguard, it would be difficult to determine whether the contraband was actually seized from the person of the accused or merely planted on his body to be used later on as an evidence against him.

Section 50 of the 1985 Act applies to case of personal search and does not apply to search of bag/briefcase/vehicle or premises as held in ***State of Punjab Vs. Baljinder Singh : AIR 2019 (SC) 5298***. Further, in “***State of Himachal Pradesh v Pawan Kumar (2005) 4 SCC 350*** ” a three judge Bench of the Apex Court held that the search of an article which was being carried by a person in his hand, or on his shoulder or head, etc., would not attract **Section 50**. It was held thus:

“In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word “person” occurring in Section 50 of the Act ...After the decision in Baldev Singh, this Court has consistently held that Section 50 would only apply to search of a person and not to any bag, article or container, etc. being carried by him.”

11. 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.

12. 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.

Conclusion

13. 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.

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

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.

(SANDEEP MOUDGIL)
JUDGE

14.01.2025

Meenu

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*