

CRM-M-28606-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(255-2)

Date of decision: 27.02.2025

(1) CRM-M-28606-2023 (O & M)

Kuldeep Singh Petitioner

V/s

State of Haryana ...Respondent

(2) CRM-M-45537-2023 (O & M)

Sawan Singh Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aditya Sanghi, Advocate,
for the petitioners in both the petitions.

Mr. Surender Singh, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two criminal miscellaneous petitions
i.e. CRM-M-28606-2023 and CRM-M-45537-2023 as they arise out of the
same FIR.

2. The petitioners, namely, Kuldeep Singh (in CRM-M-28606-
2023) and Sawan Singh (in CRM-M-45537-2023) seek the grant of regular

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bail under Section 439 Cr.P.C. in case bearing FIR No.83 dated 09.02.2023 under Sections 15/15 (C) of the NDPS Act No.61 of 1985, registered at Police Station City Mandi Dabwali, District Sirsa, Haryana.

3. For the sake of convenience, the facts are being taken from the petition bearing No. CRM-M-28606-2023.

4. The brief facts of the case are that Kuldeep Singh (petitioner in CRM-M-28606-2023) and Sawan Singh (petitioner in CRM-M-45537-2023) were apprehended while they were on board a truck bearing registration No.RG07GB-6191 make TATA 2518 Red coloured. The recovery of 97 kgs. of poppy husk powder came to be effected from the said truck.

5. The petitioners sought the concession of bail which was declined by the Trial Court. Kuldeep Singh approached this Court seeking the grant of regular bail vide CRM-M-28606-2023. Alongwith a prayer for regular bail, there was a prayer for the grant of interim bail till the receipt of the report of the Forensic Science Laboratory (FSL) regarding the contents of the contraband.

On 14.07.2023, on the contention of the petitioner's counsel that the FSL report had not been received so far, an affidavit was called for from the Assistant Director, Regional Forensic Science Laboratory, Hisar and the matter was posted for hearing on 21.07.2023. On that date, the affidavit dated 19.07.2023 which was filed was found to be inadequate and the matter was posted for 25.07.2023. On that date, the FSL report dated 20.07.2023 was produced by the learned State counsel and taken on record



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as Mark 'X' and the case was posted for hearing on 02.08.2023. On that date, a status report of the Deputy Superintendent of Police, Dabwali, District Sirsa, dated 01.08.2023 was taken on record and the case was adjourned to 08.08.2023. On that date, the Additional Chief Secretary to Government of Haryana filed an affidavit with respect to Forensic Science Laboratories in the State of Haryana. Meanwhile, the matter was adjourned to 22.08.2023 and thereafter, it came for hearing only on 14.11.2023. On that date, with reference to an affidavit dated 17.10.2023, the State counsel pointed out that advertisements for recruitment of various posts in the Forensic Science Laboratories had been issued. The matter was adjourned to 23.01.2024. However, as the petitioner-Kuldeep Singh was stated to be in custody since 19.02.2023 and the charges had not been framed, he was ordered to be released on interim bail till the next date of hearing only whereas in the connected petition (CRM-M-45537-2023), the petitioner-Sawan Singh was also granted the concession of interim bail vide order dated 06.12.2023. Both the orders of interim bail dated 14.11.2023 and 06.12.2023 have continued to be in operation ever since then.

6. The learned counsel for the petitioners contends that the petitioners have been falsely implicated in the present case. There was non-compliance of the various provisions of the NDPS Act regarding search and seizure including Section 50. As the petitioners had already been granted interim bail, which concession had not been misused and the Trial had not

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made any significant progress as only 03 out of the 19 prosecution witnesses had been examined so far, they were entitled to the concession of bail.

7. The learned counsel for the State, on the other hand, has filed separate custody certificates dated 25.02.2025 which are taken on record. He contends that almost double the commercial quantity of contraband had been recovered from the truck in which the petitioners were travelling. Initially, in the petition (CRM-M-28606-2023) preferred by the petitioner-Kuldeep Singh, alongwith the prayer for the grant of regular bail, there was an additional prayer that he be released on interim bail awaiting the report of the FSL. The report of the FSL was brought on record on 25.07.2023. A perusal of the report would clearly establish that poppy straw (choora post) had been recovered from the petitioners. The petitioner-Kuldeep Singh had been granted the concession of interim bail vide order dated 14.11.2023 on the premise that charges had not been framed whereas the petitioner-Sawan Singh (in CRM-M-45537-2023) had been granted the concession of interim bail vide order dated 06.12.2023. However, there was absolutely no discussion regarding the satisfaction that is to be arrived at under Section 37 of the NDPS Act of the petitioners not having committed an offence and that they were not likely to commit any in future. He contends that the petitioners are habitual offenders with one case i.e. FIR No.260/2021 under Section 22 NDPS Act, Police Station Sadar Dabwali, Sirsa registered against the petitioner-Kuldeep Singh and the petitioner-Sawan Singh is a convict in two other cases registered against him vide FIR No.264/2020 dated



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28.12.2020 under Sections 21B/61/85 NDPS Act, Police Station Canal Colony, Bathinda and FIR No.225/2018 dated 22.05.2018 under Sections 15/61/85 NDPS Act, Police Station City Dabwali, Sirsa. Therefore, the satisfaction under Section 37 of the NDPS Act that the petitioners had not committed the offence and that they were not likely to commit one in future cannot be arrived at. Further, as 03 out of the 19 prosecution witnesses already stand examined and the Trial is proceeding steadily, the petitioners were not entitled to the concession of bail on the ground of delay in the conclusion of the Trial. Therefore, the present petitions were liable to be dismissed.

8. I have heard the learned counsel for the parties.

9. A perusal of the file would reveal that almost double the commercial quantity of contraband has been recovered from the truck in which the petitioners were travelling. A prayer for the interim bail was made on the ground that the FSL report was not received. However, the said report was brought on record vide order dated 25.07.2023 and would show that choora post (poppy straw) was recovered from the Truck. The petitioner-Kuldeep Singh was granted interim bail on 14.11.2023 on account of the fact that he had been in custody since 09.02.2023 and the charges were yet to be framed. Based on the said order, the petitioner-Sawan Singh (in CRM-M-45537-2023) was granted the concession of interim bail vide order dated 06.12.2023. However, the Trial has now made significant



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progress as 03 out of the 19 prosecution witnesses stand examined and the next date of hearing is 04.03.2025.

10. Bail under the provisions of the NDPS Act can only be granted in terms of Section 37 of the Act which is reproduced 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 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."

11. The question of grant of bail in the context of Section 37 of the Act has been considered time and again by various Courts including the Hon'ble Supreme Court and some of the relevant judgments in that regard are as under:-

The Hon'ble Supreme Court in '***Union of India versus Shri Shiv Shanker Kesari 2007(4) RCR(Criminal) 186***', has held as under:-



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3. According to learned counsel for the, appellant the parameters of Section 37 of the Act have not been kept in view while accepting the prayer for grant of bail. It was pointed out that huge quantity of poppy straw was recovered from the possession of the respondent from house No. K.63/ 121, Gola Deena Nath, Varanasi. It is submitted that the prayer for bail was rejected by the District Judge in terms of Section 37 of the Act after elaborately dealing with the background facts. Bail can only be granted on fulfillment of two conditions i.e. (i) where there are reasonable grounds for believing that the accused is not guilty of the offence and (ii) that he is not likely to commit any offence while on bail. Learned Single Judge while accepting the prayer for bail has not recorded any finding that there are reasonable grounds for believing that the accused was not guilty. Further, no finding has been recorded that he is not likely to commit any offence while on bail.

4. Learned counsel for the respondent on the other hand submitted that the prosecution has failed to establish exclusive possession and the applicant-respondent had no criminal history. Therefore, it was submitted that the order of the High Court does not suffer from any infirmity.

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6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and. that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable



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belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. *The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable'. Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable'. Reason varies it, its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. (See : Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar and another, (1987)4 SCC 497 and Gujarat Water Supplies and Sewerage Board v. Unique Erectors (Gujarat) Pvt Ltd and another [(1989)1 SCC 532].*

9. *It is often said "an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space". The author of 'Words and Phrases' (Permanent Edition) has quoted from in re Nice &, Schreiber 123 F. 987, 988 to give a plausible meaning for the said word. He says, "the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined". It is not meant to be expedient or convenient but certainly something more than that.*

10. *The word 'reasonable' signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See : Municipal Corporation of Greater Mumbai and another v. Kamla Mills Ltd. 2003(4) RCR(Civil) 265: (2003)6 SCC 315).")*



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11. *The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.*

12. *Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.*

The Hon'ble Supreme Court in '**Union of India versus Prateek Shukla 2021(2) RCR(Criminal) 314**', has held as under:-

11. *Ex facie, there has been no application of mind by the High Court to the rival submissions and, particularly, to the seriousness of the allegations involving an offence punishable under the provisions of the NDPS Act. Merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind by the Single Judge of the High Court to the basic question as to whether bail should be granted. The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. There has been a serious infraction by the High Court of its duty to apply the law. The order granting bail is innocent of an awareness of the legal principles involved in determining whether bail should be granted to a person accused of an offence under the NDPS Act. The contention of the respondent that he had resigned from the Company, Altruist Chemicals Private Limited, must be assessed with reference to the allegations in the criminal complaint which has been filed in the Court of the District*



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and Sessions Judge. Gautam Budh Nagar (Annexure P-6). The relevant part of the complaint reads as follows:

"18. That during investigation of the case, letter dated 27.11.2018 was sent to the Registrar of Companies for providing details of the Directors etc of the company in question i.e. U/s Altruist Chemicals Pvt Ltd and vide its report dated 03.12.2018 Registrar of Companies provided the said information and from the perusal of said information/documents, it reveals that accused Prateek Shukla and Bismillah Khan are the Directors. Accused Himanshu Rana was also Director but he has resigned from the directorship. From the perusal of the documents, it also reveals that they had registered the company, i.e., Altruist Chemical Pvt. Ltd. At 001, Block Ab-Sector-45, Noida, which is a residential area and accused persons also obtained Unique Registration No. from the NCB on the above said premises."

12. We may also note at this stage the contention of the respondent in the application for bail which was filed before the High Court (Annexure P-8) that he had transferred 99% of his shareholding in the Company to Bismilla Khan Ahmadzai. Bismilla Khan Ahmadzai, as the prosecution alleges at this stage, is an Afghan national. The application for bail which had been filed before the High Court as well as the counter affidavit which has been filed in the present proceedings suppress more than what they disclose. Be that as it may, we are of the view that the High Court was clearly not justified in granting bail and the reasons provided by the High Court, as we have already indicated above, do not reflect application of mind to the seriousness of the offence which is involved. Indicating that the respondent as an educated person with a Bachelor of Technology "may not commit any offence" is an extraneous circumstance which ought not to have weighed with the High Court in the grant of bail for an offence under the NDPS Act.



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The Hon'ble Supreme Court in '***Narcotics Control Bureau versus Mohit Aggarwal, 2022(3) RCR(Criminal) 985***', has held as under:-

14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

The Delhi High Court in '***Suvashish Roy @ Jessy Roy versus Narcotics Control Bureau, 2025 NCDHC 954***', has held as under:-

15. Concededly, the quantity of narcotic substance recovered in this case from the present applicant is commercial quantity. Therefore, the twin conditions under Section 37 of the NDPS Act will have to be satisfied by the applicant so as to be entitled to grant of bail. Section 37 of the NDPS Act is set out below:

"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.



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(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."

16. *The Hon'ble Supreme Court in Narcotics Control Bureau v. Mohit Aggarwal: 2022 SCC Online SC 891, while explaining the meaning of 'reasonable grounds' under Section 37(1)(b) of NDPS Act, has held as under:*

"14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail."

17. *In the case of Union of India v. Prateek Shukla: (2021) 5 SCC 430 as well as State v. Lokesh Chadha: (2021) 5 SCC 724, it was held by the Hon'ble Supreme Court that the provisions of Section 37 of NDPS Act have to be applied strictly at the time of deciding bail application of an accused.*

18. *With regard to Section 37 of NDPS Act, this Court is of the view that the respondent/NCB has been successful in showing that there are reasonable grounds to believe that the applicant herein is guilty of the alleged offence. Further, this Court also takes into consideration the fact that the applicant has criminal antecedents, including his involvement in Case No. VIII/53/DZU/2021, pertaining to possession, distribution, and trafficking of narcotic drugs. Though he has been granted bail in the said case, the possibility of the applicant engaging in similar activities and committing similar offence cannot be ruled out, particularly taking into account the nature, variety and quantity of recovery made from the present applicant.*

12. A perusal of Section 37 of the Act and the judgments would establish beyond doubt that for the purposes of grant of bail, the Court has to



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arrive at a satisfaction that there are reasonable grounds of believing that the accused is not a guilty of the offence in question and that he is not likely to commit any offence while he is on bail.

13. In the instant case, a perusal of the FIR and the report under Section 173 (2) Cr.P.C. would *prima facie* reveal that almost double of the commercial quantity of contraband is alleged to have been recovered from the Truck in which the petitioners were travelling without any reasonable explanation whatsoever. Further, petitioner-Kuldeep Singh is an undertrial in another case under the NDPS Act arising out of FIR No.260/2021 whereas the petitioner-Sawan Singh is a convict in two other cases under the NDPS Act arising out of FIR No.264/2020 dated 28.12.2020 and FIR No.225/2018 dated 22.05.2018. Therefore, they have criminal antecedents.

14. Thus, in the present factual scenario, this Court cannot arrive at a satisfaction that there are reasonable grounds of believing that the petitioners were not guilty of the offence in question and that they are not likely to commit any offence while on bail, particularly, in the context of the criminal antecedents of the petitioners.

15. In view of the aforementioned discussion, there is no merit in the present petitions and therefore, the same stand dismissed.

16. The interim orders dated 14.11.2023 (in CRM-M-28606-2023) and 06.12.2023 (in CRM-M-45537-2023) granting bail to the petitioners-Kuldeep Singh and Sawan Singh respectively stand vacated.

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17. Both the petitioners are directed to surrender before the Jail Authorities concerned forthwith.

18. The pending applications, if any, stand disposed of accordingly.

19. A photocopy of this order be placed on the file of the connected case.

February 27, 2025
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No