

CRM-M-57252-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57252-2024
Reserved on: 02.04.2025
Pronounced on: 29.04.2025

Surender Prasad Verma

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.S. Sandhu, Advocate
For the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
44	30.01.2024	Samalkha, District Panipat	18, 29 of NDPS Act (Section 27A of NDPS Act and 201 IPC added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts and allegations are taken from the reply filed by the State. On 30.01.2024, when the investigator was on duty along with his team, then he received a secret information that petitioner would come to Samalkha and he is having narcotics. Based on this information, the investigator claims to have complied with the provisions of Section 42 of NDPS Act and after that created barricading in the area. In the meantime, they noticed one person holding a white plastic bag in his right hand, who on seeing the police party and the government vehicle tried to turn back and walking swiftly. On this he was apprehended by the police officials and on inquiry, he disclosed his name Surender Prasad Vema (present petitioner). Subsequently, the investigator claims to have served him the notice under Section 50 of NDPS Act and on this petitioner demanded that his search be conducted before some gazetted officer. Based on this, one ETO was called and when he came, the search was conducted in his presence. The plastic bag

CRM-M-57252-2024

which the petitioner was carrying contained 5.140 kg of opium.

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

REASONING:

6. An analysis of the arguments and counter arguments would lead to the following outcome.

7. Petitioner seeks bail on the ground that investigator and the complainant were the same person, as such he is entitled to bail and also refers to the judgment passed by the Hon'ble Apex Court in *Mohan Lal vs. State of Punjab 2018(4)RCR Criminal 101*. Answer to the above said arguments lies in the fact that after Mohan Lal's case (supra), the Hon'ble Supreme Court of India in *Varinder Kumar vs. State of Himachal Pradesh (2020) 3 SCC 321*, had clarified that when the petitioner had opted for his search under Section 50 of NDPS Act, then the search was conducted before the Gazetted officer, as such prima facie it would not taint the recovery. The jurisprudence is that the investigator and the complainant cannot be the same person because one cannot judge its own cause. In the present case recovery is being conducted in the presence of gazette officer would certainly rule out the prejudice subject to explanation offered by the investigator as per the circumstances and the efforts made to call some other investigator if the circumstances and the provisions of law so warranted. All this can be proved only in the trial and thus for the purpose of bail, petitioner is not entitled to bail on this ground in the facts and circumstances of the present case.

8. Petitioner's next argument is that recovery had taken place at 9.30pm after sunset but the mandatory provisions of Section 42(2) of NDPS were not complied with. This argument is beyond the scope of statute because recovery is not from any building or any enclosed space, as such on the face of it provisions of Section 43 of NDPS would apply. Consequently, the petitioner is not entitled to bail. Petitioner's next ground is that he is entitled to bail because he is first offender. This argument is also meaningless because Section 37 of NDPS Act puts rigorous on the court and there is no exception for the first offenders. Petitioner's last argument is that trial is delayed and he is already in custody for more than 01 year 02 months. State counsel opposes the bail on this ground by submitting that they are not responsible for delay of trial and the quantity recovered was more than 200% of the commercial quantity, as such petitioner should not be granted bail at this stage.

9. An analysis of the argument would lead to the following outcome. Although there are judicial precedents of the Hon'ble Supreme Court of India, in which bail is granted for possessing Codeine phosphorous and ganja etc., on the ground of prolonged custody

CRM-M-57252-2024

i.e. after a period of 01 year & 02 months and even lesser but petitioner's counsel did not refer to any judicial precedent, where contraband is opium, Hon'ble Supreme Court or any other bench of this Court had granted bail after the custody of 01 year & 02 months.

10. Recovery is around 200 % of the commercial quantity, after custody of 01 year & 02 months. Therefore, considering that the quantity of opium from the petitioner is more than 200 % of the commercial quantity, this Court does not deem it appropriate to grant bail at this stage.

11. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

12. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offense punishable for offenses involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offense and is not likely to commit any offense while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offense punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

13. The State's Counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

14. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The

¹ **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.

CRM-M-57252-2024

stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling them to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such an offense and is not likely to commit any offense while on bail. If either of these conditions is not met, the ban on granting bail operates. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again.

15. The petitioner’s arguments did not point toward any material contradictions.

16. The submissions made above and the grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

17. Per the custody certificate, the petitioner's custody is 01 year, 02 months & 03 days which cannot be considered prolonged.

18. In *Union of India (NCB) v. Khalil Uddin*, decided on 21 Oct 2022, 2022 SCC OnLine SC 2109, Hon’ble Supreme Court holds,

[4]. According to the prosecution, contraband material weighing about 13 kgs. of morphine was found in a motor vehicle which was driven by co-accused named Md. Jakir Hussain. During the course of investigation, it was found that the motor vehicle was recorded in the name of Md. Nizam Uddin who had executed a sale letter and handed over the custody of the vehicle to accused Md. Abdul Hai and that accused Md. Jakir Hussain was the driver employed by accused Md. Abdul Hai and that contraband material in question was to be handed over to accused-Khalil Uddin, an owner of a tea shop.

[5]. The High Court by its order which is presently under challenge, directed release of both the accused as stated above on bail after they had undergone custody to the tune of about a year.

CRM-M-57252-2024

Questioning grant of relief to said accused, the instant appeals have been preferred.

[7]. What emerges from the record is that large quantity of contraband weighing about 13 kgs of morphine was found in a car which was driven by Md. Jakir Hussain. Whether the role played by said Md. Jakir Hussain could get connected with both the accused is a question.

[8]. The answer to said question could be the statement recorded of Md. Nizam Uddin. The statement of Md. Jakir Hussain recorded under Section 67 of the Act has also named his owner accused Abdul Hai. We are conscious of the fact that the validity and scope of such statements under Section 67 has been pronounced upon by this Court in *Tofan Singh v. State of Tamil Nadu*. In *State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta*, the rigour of law lay down by this Court in *Tofan Singh* was held to be applicable even at the stage of grant of bail.

[9]. However, going by the circumstances on record, at this stage, on the strength of the statement of Md. Nizam Uddin, though allegedly retracted later, the matter stands on a different footing. In our considered view, in the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail. We, therefore, allow these appeals, set aside the view taken by the High Court and direct that both the appellants be taken in custody forthwith.

[10]. We have been given to understand that the charge-sheet has been filed. In the circumstances, we direct the Trial Court to take up the matter and conclude the proceedings as early as possible and preferably within six months from the receipt of this order.

19. In *Narayan Takri v. State of Odisha*, decided on 10 Sep 2024, SLP (Crl.) 8198-2024, Hon'ble Supreme Court holds,

The petitioners are in custody since 28th May, 2022 for alleged commission of alleged offence under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. As per the FIR allegation, 125.3 kg. of "Ganja" was recovered from the petitioners.

[3]. It is not in dispute that the trial has commenced and that three prosecution witnesses have been examined till date.

[4]. Learned counsel for the petitioners submits that the third prosecution witness was examined as far back as on 28th January, 2024 and since then, no other prosecution witness has been examined. There is, however, no such averment in the petition.

[5]. Learned counsel appearing for the respondent submits that every endeavor shall be made on behalf of the prosecution to have all the witnesses examined by the end of this year.

[6]. The trial court is encouraged to expedite the trial and give its decision as early as possible, in accordance with law.

[7]. We, however, do not see any reason to interfere the impugned judgment and order at this stage; however, it is clarified that in the event the trial is not completed by the end of this year, the

CRM-M-57252-2024

petitioners shall be at liberty to renew their prayer for bail before the trial court.

20. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

21. The petitioner's custody of around 01 year, 02 months & 03 days cannot be termed prolonged, given the minimum sentence prescribed for the offense.

22. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

23. Petition dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.04.2025

anju rani

Whether speaking/reasoned: Yes

Whether reportable: No.