



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

221/2

CRM-M-32785-2024 (O&M)

Date of Decision: 05.08.2024

Justine

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Tarun Singhal, Advocate for the petitioner.

Mr. T.P.S.Walia, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure seeking bail pending trial in FIR No.141, dated 24.08.2022, under Sections 21-C, 29 and 31 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 201 IPC added later on), registered at Police Station, Kartarpur, District Jalandhar Rural, Punjab.

2. Learned State counsel has produced custody certificate dated 04.08.2024 and the same is taken on record. Registry to tag the same at appropriate place.

3. Allegations are that 500 grams of heroin and 120 grams of Ice containing salt methamphetamine were recovered from co-accused Ajit Kumar and Rupesh Kumar respectively and petitioner was nominated in FIR on disclosure of co-accused Ajit Kumar.

4. Contends that petitioner is in custody since 27.08.2022. Also contends that petitioner was not named in the FIR; rather nominated on the basis of disclosure made by co-accused. The petitioner was already in custody in some other case; thus, he has been falsely implicated in the



present case. Further submits that although, petitioner is a previous convict; but his sentence has been suspended by Division Bench of this Court. Still further submits that trial is likely to take sufficient long time; thus his further incarceration would not serve any purpose.

5. *Per contra*, learned State counsel while opposing the prayer submitted that petitioner is the member of a racket, being operated inside the jail and supplying the drugs. Also submitted that recovery alleged in the present case is commercial in nature and as such, in view of the bar under Section 37 of the NDPS Act, present petition is liable to be dismissed.

6. Heard learned counsel for the parties and perused the paper book.

7. Before proceeding further, it is relevant to extract the provisions of Section 37 of the NDPS Act and the same read as under:-

Section 37 of the NDPS Act – 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.”

8. Aforesaid Section, is in the nature of non-obstante clause and which, *interalia*, lays down that no person accused of an offence involving commercial quantity shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and not likely to commit any offence while on bail.

9. Both the above conditions are cumulative and not alternative. The law is well settled that requirement of satisfaction in terms of Section 37 (1)(b)(ii) (*ibid*) regarding the accused being not guilty is to be recorded on the basis of reasonable grounds and that should be more than *prima facie*.

10. It is not in dispute that initially, petitioner was not named in the FIR; but during the course of investigation, it surfaced that he is a part of racket and the petitioner was nominated as an accused in the present case.

11. It is also an admitted position that petitioner is a previous convict in FIR No. 59 dated 09.04.2019 registered under Section 21 NDPS Act, at Police Station Bhogpur, District Jalandhar Rural, and he has been sentenced to undergo rigorous imprisonment for 12 years.

Of course, in the above case, sentence of petitioner has been suspended; but that will not wipe out the conviction. Thus, the credentials of petitioner cannot be said to be clean.

12. In view of the above, this Court is not inclined to record the twin test satisfaction in favour of the petitioner as per Section 37 of the NDPS Act.

13. Consequently, there is no option, except to dismiss the petition.

14. Ordered accordingly.

15. The above observations be not construed as an expression of



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opinion on merits of the case; rather confined only to decide the present bail matter.

Pending application(s), if any, shall also stand disposed off.

05.08.2024

Rajeev (rvs)

(MAHABIR SINGH SINDHU)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes

