

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52223 of 2021 (O&M)

DECIDED ON:1st August, 2022

Gurbhej Singh @ Bheja

....PETITIONER

VERSUS

State of Punjab

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. G.S. Goraya, Advocate for petitioner.

Mr. Amit Mehta, Sr. DAG Punjab.

AVNEESH JHINGAN, J (ORAL)

Petitioner is seeking regular bail in case of FIR No.182 dated 4.11.2020, under Sections 21, 21-C, 23, 29 of Narcotic Drugs and Psychotropic Substances act, 1985 (for short 'the Act') and Section 25 of Arms Act, 1959, registered at Police Station City Jalalabad, District Fazilka.

As per the case set up on 4.11.2020, SI along with Head Constable and Home Guard while going on a government vehicle received an information that SI Gurdev Singh CIA Fazilka has apprehended two persons with an Alto Car having no registration plate. Another Investigating Officer for investigating the matter was called for. From the search of the car, 120 grams of heroin and Rs.60,000/- drug money was recovered. Petitioner-Gurbhej Singh @ Bheja and Kulwant Singh were apprehended. At the instance of accused, 3 kilogram 546 grams Heroin and .12 bore pistol was recovered from Burji No.192/13G in the area of BSF Post, Bareke.

Learned counsel for the petitioner submits that the petitioner was apprehended at night. There was no authorisation or a warrant to search the car. He further submits that the petitioner is in custody since 4.11.2020.

Learned State counsel opposes the prayer and submits that the petitioner is involved in four more cases under the Act and he is not on bail in any of the case. Recovery at the instance of accused is of commercial quantity of Heroin and weapon.

Section 37 of the Act provide a stringent provisions for grant of bail in cases of involving commercial quantity.

The Supreme Court in *Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19th July, 2022*, held as under:

"10. The provisions of [Section 37](#) of the NDPS Act read as follows:

“[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.]

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In [“Collector of Customs, New Delhi v. Ahmadalieva Nodira”](#)⁵, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. 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” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.**” [emphasis added]

"18. In our opinion the narrow parameters of bail available under [Section 37](#) of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under [Section 37](#) of the NDPS Act."

The observations made hereinafter is only for the purpose of deciding bail petition and shall not be construed as an expression of opinion on the merits of the case.

The contention of learned counsel for petitioner that car was apprehended after sunset and without authorisation would be subject matter of trial. *Suffice-to-say* that it was a chance recovery. Moreover, apart from the recovery made from the car, more than 3 kilograms of Heroin and a weapon was recovered from the Border area at the instance of accused. The allegations against the petitioner are serious.

As per Section 37 of the Act, for grant of bail in cases involving commercial quantity of contraband, the Court has to satisfy itself on the reasonable ground that accused is not guilty and he is not likely to commit any offence while on bail. The twin conditions are required to be fulfilled. The petitioner is involved in four more cases under the Act. In such circumstances, it cannot be prima-facie concluded that he is not likely to commit any offence while on bail. As held by the Supreme Court in *Mohit Aggarwal's case (supra)*, custody period itself alone cannot be a ground for grant of bail.

The petition is dismissed.

Since the main case has been dismissed, the pending application, if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

1st August, 2022

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Whether speaking/reasoned Yes

Whether reportable Yes