

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No. 831 of 2021

Date of decision: May 31, 2021.

Raman Kumar

.....Petitioner.

Versus

The State of Himachal Pradesh

.....Respondent.

Coram

Ms. Justice Jyotsna Rewal Dua, *Judge*.

Whether approved for reporting?¹

For the petitioner : Mr. Vijender Katoch, Advocate.

For the respondent : Mr. Amit Kumar Dhumal, Dy. AG with
Mr. Manoj Bagga, Asstt. AG.

THROUGH VIDEO CONFERENCING

Jyotsna Rewal Dua, *Judge (Oral)*

Petitioner is in custody since 9.3.2021 in FIR No. 48/2021, dated 9.3.2021 registered under Sections 21 and 22 of the Narcotic Drugs & Psychotropic Substances Act, at Police Station, Indora, District Kangra. He prays for release on regular bail.

2. According to the prosecution, while on routine checking duty on 8.3.2021, at around 9:15 P.M. a police party had signalled an Innova vehicle bearing No. HR-06AH-5386 coming

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*

from Thakurdwara side, to stop. The vehicle had two occupants. On its slowing down, the person occupying the passenger seat adjoining to the driver seat, opened the door, jumped outside, ran away and escaped. The driver of the vehicle also appeared visibly perplexed. On questioning, he confirmed the identity of his companion as Soni son of Shri Dharam Pal. This person is still at-large. The petitioner, who was driving the vehicle, disclosed his companion to be his brother-in-law. After associating independent witnesses and after complying with all codal formalities, the police party carried out the search of the vehicle. During the search, 500 Ridley capsules were recovered from beneath the seat. The weight of the recovered capsules was 337 grams. Currency notes of ₹3,39,800/- were also recovered from the vehicle. From the dashboard of the vehicle, ten grams of heroin was recovered. This led to registration of FIR on 9.3.2021.

3. The State Forensic Science Laboratory, Junga has confirmed the recovered capsules to be a sample of prohibited psychotropic substance Tramadol. The quantity of the contraband recovered from the vehicle is commercial, therefore, Section 37 of the NDPS Act comes into play, which reads thus:-

"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 of 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 subsection (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."*

In this regard, Hon'ble Apex Court in **AIR 2020 SC 721, State of Kerala Etc. Versus Rajesh Etc.**, held as under vide paras 19 to 21:-

"19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In *Union of India Vs. Ram Samujh and Ors.* 1999(9) SCC 429, it has been elaborated as under:-"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting deathblow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95] as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied.

The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

20. *The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with nonobstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.*

21. *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. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."*

In order to make out a case for release on bail, petitioner has to satisfy the following twin conditions imposed in Section 37:-

- (i) Court should be satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence; and
- (ii) Petitioner is not likely to commit any offence while on bail.

Neither any material has been placed on record nor any submission has been made, from which a satisfaction can be recorded that there are reasonable grounds to believe at this stage, about petitioner being not guilty of the offences levelled against him in the FIR. Therefore, this petition fails and is accordingly dismissed reserving liberty to the petitioner to file afresh petition in accordance with law at an appropriate stage.

It is clarified that observations made above are confined only to the adjudication of instant bail petition and shall have no effect on the merits of the matter. Learned trial Court shall decide the matter without being influenced by above observations.

**Jyotsna Rewal Dua
Judge.**

May 31st , 2021
(vs)