

IN THE COURT OF RAMAN KUMAR, JUDGE, SPECIAL COURT,
KAPURTHALA. UID:PB0183.

CNR No. PBKP010035692020



Case No. BA/1754/2020

Presented on : 03-09-2020

Registered on : 03-09-2020

Decided on : 08-09-2020

Lakhwinder Singh @ Lucky aged about 30 years son of Udham Singh,
resident of Ward No.1 Begowal, Tehsil Bholath, District Kapurthala.

..... Applicant/Accused

Versus

State of Punjab.

.....Respondent.

FIR No.60 dated 19.07.2018.

U/s 22-61-85 of NDPS Act.

P.S.Begowal, Kapurthala.

(Application for bail u/s 439 Cr.P.C.)

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Present: Sh.Shamsher Singh, Adv.counsel for applicant-accused.

Sh.J.S.Marok, Additional PP for the State.

ORDER

Heard on the bail application. It is submitted by counsel for the
applicant/accused that Police of P.S.Begowal has registered a false case
against the applicant/accused. No offence has ever been committed by the

applicant/accused as alleged by the prosecution. The applicant/accused is in custody since 19.07.2018. The alleged recovery of 150 grams intoxicant powder was never effected from the applicant/accused, hence Section 37 of NDPS Act does not bar to grant bail to the applicant/accused. It is further submitted that nothing is to be recovered from the applicant/accused. The applicant/accused will not abscond or tamper with the prosecution evidence. No useful purpose would be served by detaining the applicant/accused further in judicial custody as the conclusion of trial will take long time. Thus it is prayed that applicant/accused may be admitted to bail as he is ready to comply with all the terms and conditions to be imposed by the Court.

On the other hand the ld. Additional PP for the State, has contested the instant bail application by advancing arguments. He submitted that considering the nature and gravity of the offence, applicant/accused is not entitled for concession of bail and bail application may be dismissed.

I have heard the Ld.Counsel for applicant/accused and Ld. Additional PP for the State and have gone through the entire case record.

As per version of the prosecution, on 19.07.2018 in the area of village Begowal, accused was found in conscious possession of 150 grams of Intoxicant powder which was a narcotic substance without any permit and licence. On receipt of FSL report the recovered substance was found to be containing ingredients of Alprazolam and thus falling under the category of commercial quantity. Challan has already been

presented against the applicant/accused and he has been charge sheeted for having committed the offence under Section 22(c) of NDPS Act.

In case law **State of Kerala etc. Vs. Rajesh etc., 2020(1) R.C.R.(Criminal) 818(SC)**, following observations were made in para no.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 Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante 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.

Thus, section 37 of the NDPS Act, creates embargo for the grant of bail to the applicant/accused, who is involved in dealing of contraband in commercial quantity. There are no reasonable grounds for believing that accused is not guilty of such offence attributed to him and that he is not likely to commit any offence, while on bail. Consequently, in view of Section 37 of NDPS Act, 1985, applicant/accused is held not entitled for concession of bail. As such, present application for bail moved by applicant-accused is hereby **dismissed**.

Anything said in this bail application shall not effect the merit of the case. File of this bail application be attached with main file.

Pronounced in open Court.

Dated:08.09.2020.

(Jhien)

(Raman Kumar),
Judge, Special Court,
Kapurthala. UID: PB0183.