

B.A. No.1442 of 2024

CNR No.PBBR01-004331-2024

Date of Institution : 14.10.2024

Date of Order : 21.10.2024

Davinder Singh, alias Gindu, son of Sawarn Singh, resident of village Shergarh, District Patiala.

.....Applicant

Versus

State

.....Respondent

FIR No.42 dated 14.04.2024,

Under Sections : 15, 25, 29, NDPS Act,
1985.

Police Station : Dhanaula, District Barnala

Present: Sh. B. S. Bhullar, Advocate, for the applicant-accused-Davinder Singh.

ORDER

Sh. Shiv Kumar Garg, Additional Public Prosecutor, has put in appearance on behalf of the respondent-State.

2. Relevant judicial record is produced and is perused.

3. Heard on the bail application under Section 483, BNSS, 2023 moved by the applicant-accused-Davinder Singh, alias Gindu through his counsel to seek regular bail from this Court.

4. Now, perusal of the record reveals that the prosecution case in a nutshell is that the accused-non-applicant-Vikram Kumar on dated 14.04.2024 had in his conscious possession narcotic drug-poppy husk, weighing 21 quintals in total, kept in a vehicle-Canter (Container), make-Ashoka Leyland, bearing registration No.HR-69-C-1373, in contravention of the provisions of the NDPS Act, 1985 and the rule or order made or condition of licence granted thereunder. After evidence came on record against him during the investigation, one Surender Kumar, alias Surinder Jakhar was nominated as an accused into the case and the offence under Section 29 of the NDPS Act, 1985 added to the FIR, vide Rapat No.21 dated 16.04.2024. After evidence came on record against them during the investigation, Davinder Singh, alias Gindu (applicant-accused) and one Jagdish Jaat were arraigned as accused into the case, vide Rapat No.14 dated 02.07.2024. The applicant-accused-Davinder Singh, alias Gindu upon interrogation on dated 06.09.2024 suffered a disclosure statement under Section 27 of the Indian Evidence Act, 1872 and got narcotic drug-poppy husk, weighing 20 kilograms in total, recovered from the disclosed place. After evidence came on record against him during the investigation, one Shyam Vanjara, alias Dada was arraigned as an accused into the case, vide Rapat No.13 dated 07.07.2024.

Representative samples of the narcotic drug-poppy husk, allegedly recovered from the possession of the co-accused-Vikram Kumar and from the applicant-accused-Devinder Singh, alias Gindu, were sent to the RTFSL, Bathinda, Punjab for chemical analysis purpose. The requisite

FSL report in regard to the narcotic drug-poppy husk, recovered from the possession of the co-accused-Vikram Kumar, stands received. As per this report, Poppy Pods were found present in the contents of the representative samples.

Now, it may be noted that the quantity of the narcotic drug-poppy husk, allegedly recovered from the possession of the co-accused-Vikram Kumar, falls within the ambit of ‘commercial quantity’ under the NDPS Act, 1985.

5. Now, it may be noted that the jurisdiction of the Court to grant bail under the NDPS Act, 1985, is circumscribed by the provisions of Section 37 of the Act, 1985. It can be granted in case where there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. It is the mandate of the legislature while is required to be followed. At this juncture a reference to Section 37 of the Act, 1985 is apposite. This provision makes the offences under the Act cognizable and non-bailable. It 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 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.”

6. It is also to be borne in mind that the legislative mandate under Section 37 of the Act, 1985 is required to be adhered and followed. The Hon'ble Supreme Court of India in **State of Kerala & Ors. v. Rajesh & Ors. (2020) 12 SCC 122** has categorically interpreted the mandate and rigors of Section 37 NDPS Act. The pertinent observations are as under:-

"18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the NDPS Act. In [**Union of India v. Ram Samujh, (1999) 9 SCC 429 : 1999 SCC (Cri) 1522**], 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 death-blow 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. State (UT of Goa), (1990) 1 SCC 95 : 1990 SCC (Cri) 65**] as under: (SCC p. 104, para 24)

'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 socioeconomic 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."

19. 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](#) CrPC, 1973 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."

7. The Hon'ble Supreme Court of India in **Union of India v. Ajay Kumar Singh @ Pappu (SC) : Law Finder Doc Id # 2174237 (D/d. 28.03.2023)** held that in view of the provisions of Section 37 of the NDPS Act, 1985, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to 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 that he is not likely to commit any offence while on bail.

8. Applying the afore-noted ratio laid down by the Hon'ble

Supreme Court in **Union of India v. Ajay Kumar Singh (Supra)** to the case in hand, this Court finds that the applicant-accused fail to accomplish the embargo laid down under Section 37 of the Act, 1985. Accordingly, I am not inclined to grant bail to the applicant-accused.

9. In the light of the facts and the law expounded above, I find the applicant-accused to be disentitled to the relief of bail from this Court. As such, I find no merit in the instant bail application and it is accordingly dismissed, while making it clear that any observation made herein shall not influence the case of the accused on merits.

10. Bail application file be annexed to the relevant record.

Pronounced in open Court on
21st day of October, 2024.

Gurdit Singh
JW Grade-II

(Kapil Dev Singla),
Judge, Special Court,
Barnala
(UID No.PB0238)