IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

207 **CRM-M-13213 of 2022 (O&M)**
Date of decision:06.06.2022

Harjeet Lal @ Laddu ... Petitioner

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Amandeep Singh Gill, Sr. DAG, Punjab.

SUVIR SEHGAL J.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Code"), whereby, the petitioner has approached this Court seeking grant of regular bail in case FIR No.65 dated 17.06.2020 lodged for offence under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"), wherein, Sections 22(c) and 29 of the NDPS Act, was added later on, at Police Station Sadar Faridkot, District Faridkot (Annexure P-1).

As per the case of the prosecution, FIR (Annexure P-1), has been registered on the basis of a secret information when a vehicle being driven by Harjeet Lal @ Laddu (present petitioner) was intercepted and 35000 tablets of intoxicating substance were recovered from its rear seat. Balwant Singh alias Billu was the co-passenger in the vehicle. On the basis of confessional statement of the said accused, who were arrested on the spot, Sanket Uppal and Vijay Kumar, were apprehended.

Besides urging that the petitioner has been falsely implicated in the FIR (Annexure P-1), counsel for the petitioner has argued that there is violation in compliance of Sections 42 and 50 of the NDPS Act. By referring to the recovery memo, counsel submits that it carries the details of the FIR, which shows that the entire search is tainted. It has also been contended that the patrolling party was travelling in a private vehicle and there is an infraction of the instructions issued by the Govt. Reliance has been placed on orders passed by this Court, whereby, co-accused have been released on bail. It is his argument that the petitioner is ailing and by relying upon Echo-cardiography Report dated 25.11.2021 (Annexure P-5), it has been contended that he has a poor heart condition.

Per contra, State counsel upon instructions, has opposed the petition. On the basis of the short reply filed by way of an affidavit dated 30.05.2022 of Deputy Superintendent of Police, Sub-Division, Faridkot, he submits that contraband recovered from the vehicle has been found to be Tramadol Hydrochloride and its total weight is more than 14 kg. He has argued that as the contraband falls within the category of commercial quantity, the petitioner cannot be enlarged on bail in view of the bar under Section 37 of the NDPS Act. Still further, he has refuted the fact that there is any violation of the mandatory provisions or guidelines issued under the NDPS Act and submits that due procedure has been followed while conducting search, seizure and arrest. Upon instructions, he submits that challan has presented and prosecution witnesses are being examined.

I have considered the rival submissions of counsel for the parties.

In order to ascertain the health condition of the petitioner, this Court directed the State to medically examine the petitioner. Medical status report by way of an affidavit dated 04.06.2022 of Additional Superintendent, Central Jail, Faridkot has been filed annexing therewith a medical report (Annexure R-2) of the petitioner, wherein, it has been submitted that the petitioner complained of chest pain in November, 2021 and was referred to GGSMCH, Faridkot and was discharged on 04.12.2021. He has again complained of headache, palpitation and restlessness and he has been kept under observation. Upon instructions, State counsel submits that the petitioner is hale and hearty and is in the process of being discharged.

Insofar as allegations against the petitioner are concerned, an exceptionally heavy recovery of contraband has been made from the vehicle which he was driving, though it is not clear as to whether the petitioner is the owner of the vehicle. Petitioner has not given any explanation for the commercial quantity of contraband that has been recovered from his possession. Bar as laid down under Section 37 of the NDPS Act is clearly attracted. Power to grant bail under Section 439 of the Code is subject to the conditions laid down in Section 37 of the NDPS Act, which commences with non-obstante clause. The Court is required to see as to whether there are any reasonable grounds to believe that the accused has not committed the offence and whether he is likely to commit any offence while on bail. This Court is satisfied that these conditions are not satisfied. The arguments of the counsel for the petitioner regarding non-compliance of the procedure and instructions, would remain subject matter of trial as has been held by the Supreme Court in **Union of India through NCB, Lucknow Vs. Md.**

Nawaz Khan (2021) 10 SCC 100. Reliance placed by the petitioner upon the orders passed by this Court in the case of co-accused, will not advance his case. Admittedly, both the co-accused were arraigned on the basis of confessional statement of the petitioner and co-accused, Balwant and no recovery has been effected from them.

Keeping in view the totality of the facts and circumstances, the huge quantity of prohibited substance recovered from the petitioner, stringent provision of Section 37 and presumption under Section 54 of the NDPS Act as well as the fact that the trial is progressing, this Court does not deem it fit to grant regular bail to the petitioner.

Petition is dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

However, this Court expects that in case petitioner requires any medical aid, the same shall be provided to him and the authorities be not found lacking in doing so.

(SUVIR SEHGAL)
JUDGE

June 06, 2022
savita

Whether Speaking/Reasoned	*Yes*
Whether Reportable	*Yes*