HIGH COURT OF PUNJAB AND HARYANA

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Date of Decision: 26.02.2024

CRM-M-55848-2023

GAUTAM SEHGAL ...PETITIONER

VERSUS

STATE OF PUNJAB ...RESPONDENT

Legislation:

Section 439 of the Criminal Procedure Code (Cr.P.C.)

Section 22 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985

Section 37 of the NDPS Act

Section 35 of the NDPS Act

Subject: Petition for regular bail in a case involving alleged possession of narcotics under the NDPS Act.

Headnotes:

Bail Application – Narcotic Drugs and Psychotropic Substances Act (NDPS) – Rejection – Accused as a chemist found with unaccounted intoxicant capsules and tablets – Court observes serious drug menace in Punjab and emphasizes stringent approach against drug trafficking – Held that there are no

reasonable grounds to believe innocence of the accused – Bail application dismissed. [Paras 1-14]

Presumption of Culpable Mental State – Section 35 of NDPS Act – Court notes absence of a satisfactory explanation by the accused to rebut the presumption of culpable mental state as per Section 35 NDPS Act – Finds the medical prescription submitted by accused to be unreliable at this stage – Bail cannot be granted due to the gravity of the alleged offence and pending FSL report. [Paras 10-12]

Decision – Rejection of Bail – High Court, considering the gravity of the offence, ongoing investigation, and lack of substantial evidence to prove innocence, denies bail to the petitioner – Observes necessity to combat drug menace and its impact on society firmly. [Para 13]

Referred Cases: None.

Representing Advocates:

Petitioner: Mr. J.S. Thakur

Respondent: Mr. Rajiv Verma, DAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in FIR No.146, dated 25.08.2023, under Section 22 of NDPS Act, 1985, registered at Police Station Sadar, District Police Commissionerate Jalandhar.

2. The contents of FIR read as under:-

"To the SHO PS Sadar Commissionerate Jalandhar, 'Jai Hind'. Today 1, SI, along with CII Jasvir Singh 1893, CII Rajwinder Singh 754, CT Vishal 1172 along with laptop, printer and riding on govt. vehicle Ertiga No. PB-08-DG-5897 whose driver is CT Jaswinder Singh No. 218 along with Drug Inspector Lajwinder Kumar Jalandhar 4 Office of Civil Surgeon Jalandhar in connection with checking of medical stores, reached Chirag Medical Store, Khambra, Jalandhar, where inside the medical store, one person was present. Upon asking his name and address he gave it as Gautam Sehgal s/o Sushil Kumar Sehgal r/o House No.42, near Income Tax Colony, Vasant Vihar, PS Division No.7, presently r / o House No.92, Ashok Nagar, Jhandian Wala Peer. Before the search of the medical store, every possible effort was made to include a public witness into the party but fearing enmity nobody was ready and in our presence, Drug Inspector Lajwinder Kumar checked the wooden drawers in the shop and in the drawers, open capsules of red colour and brown colour and white coloured intoxicant tablets were recovered. Upon counting the capsules, red capsules were 150 in number and brown capsules were 180 and intoxicant tablets, when counted, were total 395 in number. Recovered red capsules numbering 150, and brown capsules numbering 180 and intoxicant tablets numbering 395 were put into separate plastic containers and total 3 parcels were prepared by me, SI, and 3 parcels were sealed by me, SI, with my letter stamp ML. Sample of stamp was prepared separately. Recovered and prepared parcels along with sample stamp were taken into Police possession vide separate Recovery Memos. Memos were signed by Inspector Lajwinder Kumar and also duly signed by witnesses. Suspect Gautam Sehgal was not able to present any bill regarding these unmarked capsules and intoxicant tablets on the spot whereby committing an offence 22/61 / 85 NDPS Act, upon which ruqa is being scribed and sent by hand through CT Vishal 1172 to the PS for registering of a case. Case be registered, Case No. be informed, Special Reports be issued and sent to Senior Officers and Ilaqa Magistrate. Control Room be informed. I, SI, along with companion personnel and Inspector Lajwinder Singh, am busy at the spot in investigation. Sd (english) Mohal Lal, SI, Anti Narcotic Cell, Comm. Jalandhar dt. 25.8.2023 today in the area of Chiraj Medical
Store, GT Road, Khurla Kingra, Jalandhar, at 9:15 pm."

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case being chemist and there was no intoxicant material in the alleged recovered capsules and tablets. It is further asserted

that the petitioner is an experienced licensed chemist since the last 16 years with no criminal antecedents.

4. He further asserts that in the absence of the FSL report, the alleged recovery of 150 red capsules, 180 brown capsules and 395 intoxicant tablets have been planted upon the petitioner, rather the same were being used as a pain medication and the said medicine was purchased from Dr. Dang's Nursing Home and Trauma Care Centre on 19.08.2023 due to an injury on his right leg.

5. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition urging that the petitioner has only suffered 6 months of custody and the said recovery falls under the NDPS Act.

6. Heard, learned counsel for respective parties.

7. The drug menace in the State of Punjab is writ large and large number of youth are falling prey at the hands of such mafia. The role of the petitioner is not that of law abiding citizen as is evident from the record before this Court. It is of utmost importance at this stage to consider the clandestine smuggling of narcotics drugs and psychotropic substance which has led to drug addiction among a sizeable section of the public, particularly the adolescence and students of both sexes. The menace has assumed serious and alarming proportions in recent times. It has to be borne in mind that in a murder case the accused commits murder of one or two persons, while those who are dealing in narcotic drugs are instrumental in causing death or inflicting death blow to a number of innocent young victims, who are vulnerable leaning deleterious effects and a deadly impact on the society and 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 obviously for large stake and easy illegal profit making mode. In the present prevailing scenario, the drug trafficking, trading and its use has acquired dimensions of an epidemic which not only effects the economic policies of the State but corrupts the system apart from leaving the impact of producing sick society. I will not be shy of saying that anti drug justice is a criminal dimension of social justice as drug addiction forms vitals of the society along with illicit money generation by drug trafficking.

8. In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the

accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

[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 3 [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.]

9. Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS
Act which discloses that the offences are cognizable and non-bailable.

10. Other than the aforesaid discussion it is Section 35 of NDPS Act which raises a presumption of culpable mental state of mind for which no explanation is forthcoming from the petitioner in this regard. Section 35 of NDPS Act reads as under:

"35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

11. Having heard the learned counsel and examining the facts and circumstances at this juncture, there is no material evidence to establish innocence of the petitioner-accused as such, the question of admitting him on bail does not arise at all, as the drug peddlers have successfully destroyed not only the social fabric of the society but finishing the youth, who are future generation of the country. Such accused need to be dealt with firmly and sternly with no sympathy to be shown to them particularly in the case in hand, wherein the petitioner is involved in smuggling of dangerous contraband.

12. As far as submissions with regard to the medical prescription is concerned, it is highly doubtful and cannot be relied by this Court at this stage.
Moreover, the accused were apprehended at the spot and the contention with regard to the recovery effected does not fall under the NDPS cannot be ascertained at this stage, as FSL report is still awaited.

13. In the light of discussion made hereinabove and looking into the cogent material before this Court, I am of the considered view that the petitioner does not deserve the concession of bail at this stage wherein FSL report is awaited.

14. Hence, the present petition stands dismissed with no order as to costs.

15. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.