IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP(M) No. 2922 of 2024

Reserved on: 30.12.2024

Decided on: 31.12.2024

Mangu Khan @ Naushad Ali

... Applicant

Versus

State of H.P.

...Respondent

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting?

For the Applicant : Mr. Y.P. Sood, Advocate.

***For the* Respondent *:* Mr. Mohinder Zharaick, Addl. A.G.**

Virender Singh, Judge

Applicant Mangu Khan has filed the present application, under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'the B.N.S.S.') for releasing him, on bail, during the pendency of the trial, in case FIR

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No. 316 of 2023, dated 18.11.2023, under Sections 22, 29, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS') registered with Police Station, Nalagarh, District Solan, H.P.

2. According to the applicant, he has allegedly been arrested by the Police, for allegedly possessing 150 blue coloured and 854 green coloured capsules, which according to him, have allegedly been found to be the sample of Tramadol, weighing 316 grams.

3. As per the applicant, he has falsely been implicated in this case, as, he, in no manner, is connected with the commission of the alleged offences.

4. It is the case of the applicant that no recovery has been effected from him, nor, he was present at the medical store, at the time of alleged raid.

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5. The applicant has tried his luck by moving bail application No. 119-S/22 of 2024, before the learned Special Judge-II, Solan, District Solan, H.P. However, the said application has been dismissed, vide order dated 27.8.2024.

6. Thereafter, the applicant has tried his luck by filing bail application bearing Cr. MP(M) No. 2145 of 2024, before this Court. However, the same was also dismissed on 25.10.2024.

7. It is the specific case of the applicant that rigors of Section 37 are not applicable to the facts and circumstances of the present case, as he was not found at the spot, nor alleged contraband was found from his conscious and exclusive possession.

8. According to the applicant, after decision of his previous bail application, by this Court, there has been change in the circumstances, as the Challan has been filed before the learned trial

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Court and the case is now fixed for consideration on Charge.

9. Lastly, it has been pleaded by the applicant that investigation, in the present case, is complete, as such, he is no longer required by the Police, for interrogation.

10. On the basis of above facts, Mr. Y.P. Sood, Advocate, appearing for the applicant, has given certain undertakings, for which, he is ready to abide by, in case, ordered to be released on bail.

11. When, put to notice, Police has filed the status report, disclosing therein that on 18.11.2023, Drug Inspector, Promila Thakur, submitted a complaint to the Police, disclosing therein, that on 10.2.2023, premises of Unnamed Clinic/Store, in village Saini Majra, P.O. Manjholi, Tehsil Nalagarh, District Solan, H.P. was raided. During inspection, the Child in Conflict with Law

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was found present at the spot, but, proprietor of the said firm was not present at the time of inspection.

11.1 According to the Drug Inspector, during inspection, loose blue coloured, green coloured capsules alongwith other Allopathic Drugs were found at the premises. It has been averred that during inspection, a customer came to the premises and asked the Child in Conflict with law to give blue coloured capsules. During his statement, he disclosed that he purchased blue coloured capsules from M/s Khushi medical store , two months ago.

11.2 Thereafter, all the medicines were seized in Form 16 and packed in a khakhi coloured box, as, he failed to produce a valid Drug License along with the sale/purchase of the drugs and samples of the medicines were taken in Form 17, coded as Raid/23-01, Raid/23-02, Raid/23-03 and Raid/23-

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04) including the Blue coloured capsules coded as Raid/23-02 and green coloured capsules coded as Raid/23-03, along with other allopathic medicines.

11.3 The application for custody order was also moved on 13.2.2023. The custody order of the seized contraband was granted on 13.2.2023 by the learned JMFC, Nalagarh, District Solan, H.P. The samples of the contraband, were sent to RDTL for analysis.

11.4 On 21.4.2023, owner of the premises was contacted, on which, he visited the office of the Drug Inspector and disclosed in his statement that he has rented out his premises to medical store naming 'Khushi Medicos' and Naushad Ali @ Mangu Khan (applicant) is the proprietor of the firm and produced certified rent agreement and copy of Fard.

11.5 As per the status report, the reports from the RDTL have been received and it has been found

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from the report that the loose blue coloured capsules coded as Raid/23-02, contained Tramadol as Hydrochloride. Similarly, the loose green coloured capsules coded as, Raid/23-03 also contained Tramadol Hydrochloride.

11.6 During further investigation, it was found from the XLN record that the particular area was raided on 10.2.2023 and there is medical store naming 'M/s Khushi Medicose' and Mangu Khan @ Naushad Ali (applicant) is the proprietor of the firm 'M/s Khushi Medicose', Sainimajra. On 26.4.2023, it was confirmed in the statement of applicant that he is the proprietor of the firm 'M/s Khushi Medicose', Sainimajra, P.O. Manjholi, Distt. Solan and his license got expired, which was raided by the team of Drugs Inspector and ANTF.

11.7 It has further been mentioned in the status report that the letter has been issued to the proprietor in this regard, which has not been

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replied till date. As per the status report, on 2.8.2023, again a notice under Section 22 (1) (cca) of Drugs and Cosmetic was sent to the child in conflict with law and Naushad Ali @ Mangu Khan (applicant), as last opportunity, but, no reply has been received till date.

11.8 It has been mentioned in the status report that Tramadol Hydrochloride is a prescription drug used to relieve moderate to moderately severe pain. However, it is having dual presence in NDPS and Drugs and Cosmetic Act, 1940 due to its potential for abuse and addiction and its sale without proper authorization is illegal.

11.9. On the basis of above facts, Police registered the FIR. Criminal machinery swung into motion. Thereafter, on 13.2.2023, the contraband, so taken into possession, by the Drug Inspector, was taken into possession by the Police. Thereafter, the contraband was produced before the competent

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Court of law and inventory was got prepared. The contraband, so recovered, was sent to SFSL, Junga.

11.10. In the laboratory, the contraband, so sent, was found to be the sample of Tramadol capsule, weighing 316.278 grams.

11.11. It is the further case of the Police that on 23.4.2024, the child in conflict with law, who was found in the shop, was associated in the investigation. His matriculation certificate was taken into possession, according to which, at the time of alleged incident, he was found to be 17 years and 2 months of age. During investigation, he has also disclosed to the Police that the original owner of the said shop was Mangu Khan (applicant), and on his direction, he used to sell the medicines, in the store. He has further disclosed that Mangu Khan (applicant) used to purchase the same. On 23.4.2024, the applicant was arrested.

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11.12 After completion of investigation, the Police found a prima-facie case, against the applicant, for the commission of offence, under Sections 22 and 29 of the NDPS Act. As such, the Challan has been submitted in the competent Court of law and the case is now listed on 14.1.2025 for consideration on charge.

12. On the basis of above facts, a prayer has been made to dismiss the application.

13. In view of the notification issued by the Ministry of Finance (Department of Revenue), dated 26.4.2018, the Tramadol has been entered at serial No. 110 Y, in the list of psychotropic substances, which are specified in the Schedule to the NDPS Act. The small quantity is stated to be 5 grams and commercial quantity is stated to be 250 grams. Meaning thereby, the contraband, which was allegedly recovered, in the present case, falls within the definition of 'commercial quantity'.

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14. Once, it has been held that the contraband, so recovered, falls within the definition of 'commercial quantity', then, rigors of Section 37 of the NDPS Act are applicable, in the present case.

15. The Police has registered the case under Sections 22 and 29 of the NDPS Act, as such, there is no substance in the argument of learned Counsel, representing the applicant that nothing has been recovered from his possession. The provisions of Section 29 of the NDPS Act, are reproduced as under:

Section 29:-Punishment for abetment and criminal conspiracy

(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

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(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

16. The Hon'ble Apex Court in a recent decision, in case titled as **Narcotics Control Bureau versus Mohit Aggarwal**, reported in AIR 2022 SC 3444, has reiterated the earlier view regarding compliance of the conditions, as enumerated in Section 37 of the NDPS Act. The relevant paras 10 to 15 of the judgment are reproduced, as under:

"10. The provisions of Section 37 of the NDPS Act read as follows:

"[37. **Offences to be cognizable and nonbailable.**–(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

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(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.

11. It is evident from a plain reading of the nonobstante clause inserted in sub-section (1) and the conditions imposed in subsection (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

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12. The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In "Collector of Customs, New Delhi v. Ahmadalieva Nodira", (2004) 3 SCC 549, a decision rendered by a Three Judges Bench of this Court, it has been held thus:

> "7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. **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.**"
>
> [emphasis added]

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13. The expression "reasonable ground" came up for discussion in "State of Kerala and others Vs. Rajesh and others" (2020) 12 SCC 122 and this Court has observed as below:

"20. 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 that 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." [emphasis added]

14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an

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offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail."

(self emphasis supplied)

17. At this stage, on the basis of record, submitted by the prosecution, it cannot be stated that the applicant has not committed the offence, nor, it can be held that he is not likely to commit any offence, while on bail. The twin conditions, as enumerated in Section 37 (b)(ii) of the NDPS Act are not existing in favour of applicant.

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18. Moreover, at the time of deciding the bail, detailed discussion, with regard to evidence, so, collected, by the prosecution, should be avoided, as, it would cause prejudice to the case of the prosecution, as well as, to the case of the accused.

19. Considering the observations and discussions, made above, this Court is of the view that the applicant is not able to make out a case for change in circumstances, at this stage. As such, the present application is dismissed.

20. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

(Virender Singh)
Judge

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