

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51042-2024
Reserved on: 06.11.2024
Pronounced on: 12.11.2024

Darshana ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. J.K. Singla, Advocate and
Ms. Suman Rani, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
79	07.05.2024	Bhikhi, District Mansa	22 (C) of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. As per paragraph 14 of the bail application and as per the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	91	13.05.2023	22 of NDPS Act	Bhikhi
2.	66	01.06.2018	61 of Excise Act	Bhikhi
3.	81	13.05.2020	22 of NDPS Act	Bhikhi

3. The facts and allegations are taken from the status report filed by the State. On May 7, 2024, based on a chance recovery, the Police seized 1200 tablets containing Tramadol from the petitioner’s possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.
4. The petitioner's counsel refers to para 3 to para 7 of the bail petition, which reads as follows:

*“3. That alleged recovery affected from plastic sack which was wrongly
been planted and challan has already been presented before Ld. trial*

Court and matter is pending for prosecution evidence but none of the witness has been examined till date as per the instructions given by the petitioner to the undersigned counsels.

4. That it is very important to mention here that name of the petitioner was wrongly been implicated just to detain her in police custody illegally by planting alleged recovery wrongly without conducting any Investigation because there is no relation or any concern of the petitioner as recovery was not affected from conscious possession of the petitioner but inspite of the knowledge of this fact that no recovery has been affected from the possession she has been falsely implicated In Impugned FIR without any reason and as such no alleged offence has ever been committed by her.

5. That when the petitioner has no concern with the alleged recovery and his name was wrongly mentioned in FIR then it is very much clear that the petitioner is Innocent person & not committed any offence. So therefore, implication of petitioner without any valid reason or without having any evidence being a poor old aged women is totally illegal and against the law.

6. That the prosecution agency was not adopted procedure as prescribed in the Act/mandatory provisions i.e. Section 42, 50 and 57 of NDPS Act, has not been complied with by investigating agency at the time of recovery and hence, the petitioner deserves bail on this ground also.

7. That the petitioner is falsely implicated in present FIR as such no offence has been committed by her because even from the allegations of the FIR it is very much clear that no recovery was affected from the petitioner and the same was recovered from plastic sack. Moreover, it is very important to mention here she has no link or relation with alleged recovery.”

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and her family.

6. The State's counsel opposes bail and refers to paras 4 to 6 of the status report, which reads as follows:

“ROLE OF PETITIONER

4. That the petitioner has been found keeping and carrying intoxicated tablets i.e. Tramadol Prolonged Released tablets IP Tramawel SR 100 in heavy quantity i.e. 1200 tablets however she was having no license or

permit doing so as described hereinabove. The petitioner was arrested on 7.5.2024 and was presented before the Id. Magistrate and the petitioner was sent in judicial custody.

EVIDENCE AGAINST PETITIONER.

5. That police party apprehended the petitioner on the basis of doubt and further her checking conducted by LC Kiranjeet Kaur in presence of ASI Gurmail Singh No. 683/Mansa, LC Kiranjeet Kaur 1339/MNS, HC Jarnail Singh, C. Avtar Singh and DSP Gurpreet Singh (SD) Mansa and 1200 Tramadol Prolonged Released tablets IP Tramawel SR 100 were recovered from the black colored plastic bag handed by petitioner. There is sufficient, solid and strong evidence against the petitioner.

NAME AND TOTAL WEIGHT OF CONTRABAND OF THE DRUG

6. That when the petitioner along with parcel of recovered contraband was produced before the Id. Illaqa Magistrate Sh. Ravneet Singh, PCS, JMJC, Mansa then the Id. Magistrate found the seal intact and then broke it and after being confirmed that batch number and expiry date is not mentioned on entire 120 strips, put the same in cloth bag and then put the cloth bag in a yellow colored paper envelope and sealed with four seals, two each of GS and RS. The said parcel was deposited with RTFSL, Bathinda vide reference No.256/SC dated 13.5.2024. As per report of chemical examiner the contraband, after identification and tests, it was reported as under: -

<i>Tramadol Hydrochloride</i>	<i>Found present in the tablets contained in the envelope</i>
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Average weight of each tablet was 375 mg. and total weight of 1200 tablets comes to 450 Gm. Copy of FSL report No. 853/2024/Toxi/RTFSL/BTI/Pb. Dated 18.6.2024 is attached as Annexure R-1.”

7. Dealing in 450 grams of Tramadol Hydrochloride is a punishable offense under the NDPS Act in the following terms:

Substance Name	Tramadol
Quantity detained	450 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	180.00%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1762(E)
Dated	4/26/2018
Sr. No.	238 ZH

Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1761(E) & S.O. 3448(E)
Dated	26-Apr-2018 & 26-Jul-2018
Sr. No.	110Y
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

8. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

9. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offense punishable for offenses involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offense and is not likely to commit any offense while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offense punishable under

¹ **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.

the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

10. The State's Counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

11. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling them to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such an offense and is not likely to commit any offense while on bail. If either of these conditions is not met, the ban on granting bail operates. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again.

12. The petitioner's arguments did not point toward any material contradictions. It was a case of chance recovery. As such, S. 42 would not apply initially, and recovery was not from the person. As such, S. 50 would also not attract. Non-examination of independent witnesses is not illegal, and its outcome depends upon the nature of evidence tendered in the examination in chief and its cross-examination.

13. The submissions made above, and the grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the bail petition to discharge the burden put by the

stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

14. As per custody certificate dated 05.11.2024, the petitioner's custody is around six months, which cannot be considered prolonged.

15. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

16. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

17. **Petition dismissed.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

12.11.2024
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.