

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4617-2022
Reserved on: 28.02.2022
Pronounced on: 07.03.2022

Mukesh @ Sanda ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Alisha Soni, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
435	04.10.2021	Industrial Sector 29, District Panipat	20, 29 of NDPS Act

1. The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, for possessing 1 kg and 100 grams of charas, which is a commercial quantity, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act seeking bail.
2. Petition silent about criminal history.
3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. While opposing the bail, the contention on behalf of the State is that drug menace is rapidly increasing.

REASONING:

5. The quantity of contraband allegedly recovered from the petitioner as per State's contention, falls in the category commercial quantity. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

6. The recovery of the contraband is allegedly from the accused. A perusal of the entire petition does not satisfy the twin conditions the legislature has put in section 37 of NDPS Act.

7. The stand that there are no criminal antecedents and that he is in custody for sufficient time is also not a legal ground to overcome the rigours of S. 37 of the NDPS Act at this stage. Further submission that the co-accused was granted bail is also not applicable because the co-accused Tarun was arrested on the basis of disclosure statement of the petitioner, whereas the police had allegedly recovered charas from the present petitioner. Thus the petitioner is also not entitled for bail on the grounds of parity.

8. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden put by the rigours of S. 37 of the NDPS Act. Thus, the petitioner has failed to make out a case for bail at this stage.

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

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

07.03.2022
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.