

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5357-2021 (O&M)

Reserved on: 12.09.2022

Date of Pronouncement: 29.09.2022

Gursewak Singh @ Gora

...Petitioner (s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. C.S. Jattana, Advocate for the petitioner(s).

Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
102	30.6.2020	Barnala, District Barnala	22, 25 & 29 NDPS Act

The petitioner Gursewak Singh under arrest for possessing 1350 tablets containing Tramadol, which he got recovered by making a disclosure statement about those being kept by him in the dicky of his scooty, and the quantity which falls in the category of commercial in violation of section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 18, the petitioner declares that about absence of any criminal antecedents.
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 the quantity of contraband involved in the case falls in the commercial category.

REASONING:

5. On 30th June 2020, based on prior information that the co-accused Ranjit

Singh deals in drugs, and was waiting in his car, and has many drugs in the car, the prosecution, after complying with the procedural safeguards of section 42 of the NDPS Act and section 100 of CrPC, they found the petitioner in the car and recovered 1500 tablets, which laboratory tested containing Tramadol. During interrogation, Ranjit Singh disclosed the petitioner Gursewak to be its seller, and police arrested him. In custody, the petitioner allegedly made a disclosure statement to the police informing them that he had kept massive number of tablets in the dicky of his scooty, and the police recovered 1350 tablets containing Tramadol.

6. The quantity allegedly involved in this case is commercial. Given this, the rigours of Section 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. To discharge the statutory burden, the petitioner Gursewak Singh has annexed still shots of CCTV, which show the police presence near the car of the co-accused Ranjit and a person with a bag going towards the car. In response to this para, it has been stated that the inquiry revealed that the CCTV cameras installed in that place were not in working condition. A reading of the reply dated 25-10-2021 points out that since the CCTVs were not functional as the still photographs cannot be relied upon. However, a *prima facie* look at these photographs, Annexures P-2 Coli, tells a different story. Once the accused has taken a specific defence, it shall be permissible for the police to dispel it through scientific expert evidence and not just through oral evidence of people residing in the vicinity. However, it is not for the petitioner Gursewak to discharge the statutory burden of his co-accused Ranjit but to satisfy the first rider of section 37 of NDPS Act for recovery of 1350 tablets from his scooty.

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

9. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail. However, it shall be open for the petitioner to file new bail application(s). The dismissal of this petition shall not come in the way while considering the fresh petition(s).

10. 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

September 29, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.