

CRM-M-7159-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-7159-2021  
Reserved on: 16.03.2022  
Pronounced on: 18.04.2022

Parminder Kaur @ Sandhu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashok Giri, Advocate for the petitioner.

Mr. Harpreet S. Multani, AAG, Punjab.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                            | Sections            |
|---------|------------|-------------------------------------------|---------------------|
| 34      | 14.03.2020 | Sadar        Banga,<br>District SBS Nagar | 21 & 22 of NDPS Act |

1. The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, for possessing a commercial quantity of heroin, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), seeking bail.
2. In paragraph 15 of the petition, it is declared that the accused has no 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. As per the prosecution's case, after the apprehension of the petitioner and her companion on suspicion, the police officials associated a DySP and after affording her an option under section 50 of NDPS Act, her search was conducted by a female police constable, in the presence of DySP, a Gazetted officer. The police recovered 55 grams of heroin, which is an intermediate quantity. However, the police also recovered 13 injection ampoules, 02 ml each, 3 were of Omgesic and 10 Leegesic. As per the report of the FSL, the total weight/quantity of liquid substance 'Buprenorphine' in 13 injections would come out to be 26 ml/grams. The substance Buprenorphine finds mentioned at entry no. 169 of the table specifying small and commercial quantities, as

**CRM-M-7159-2021**

per which the quantity greater than 20 grams falls in commercial quantity and lesser than 1 gram as small. Thus, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 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.

6. The petitioner states that the quantity of Buprenorphine allegedly recovered is 23.4 grams and is marginally above the commercial quantity notified as greater than 20 grams. This submission is more compassionate than legal. Once the quantity is greater than commercial, it is immaterial for the purpose of bail. Once it is in statute, Judges have no latitude. Given the legislative mandate under section 37 of the NDPS Act, an accused is not entitled to bail if the quantity is marginally above the commercial quantity.

7. The next submission is that the petitioner is a woman and has a baby of tender years to look after, who is at the mercy of her maternal grandmother. Even this submission is insufficient to overcome the riders of section 37 of the NDPS Act because the child is with her grandmother and not abandoned by her family.

8. The stand that the accused is in custody for sufficient time is also not a legal ground to overcome the rigors of S. 37 of the NDPS Act at this stage.

9. 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 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.

10. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage. However, it shall be open for the petitioner to file fresh bail application before the trial court in changed circumstances or after recording the statements of witnesses other than formal witnesses, whichever is earlier.

11. 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

18.04.2022  
anju rani

Whether speaking/reasoned: Yes  
Whether reportable: YES.