

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8243-2022
Reserved on: 01.04-2022
Pronounced on: 02-04-2022

Ramesh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Suvir Kumar, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
122	12.06.2021	City Kotkapura, District Faridkot	22(C), 15(b)61/85 of NDPS Act, 1985 (later on added section 29/61/85 of NDPS Act)

1. Having been named by the co-accused as a seller of the contraband recovered by the police, the petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as per the FIR captioned above had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 13 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. The contention on behalf of the State is that recovery is yet to take place, the petitioner has criminal antecedents, and bail encourages habitual offenders. While opposing the bail, the contention on behalf of the State is that drug menace is rapidly increasing.

REASONING:

5. The quantity allegedly involved is 17400 tablets allegedly containing Tramadol. As per notification dated 26 Apr 2018, Tramadol finds mentioned at entry no. 238ZH of the table specifying small and commercial quantities, as per which the quantity greater than 250 grams falls in commercial quantity and lesser than 5 grams as small. Thus, the quantity allegedly involved in this case is almost certainly much above the 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. It is appropriate to refer to paragraph 6 of the status report, supported by an affidavit of DySP.

“ That during further investigation, on 17-6-2021 said Tota Singh was apprehended and arrested in this case in accordance with law. From the joint interrogation of accused the other drug peddlers namely Ghamda Ram son of Jetha Ram R/o Sangrehini Ki Beri, Distt. Barmer and Ramesh son of Lakhmi Chand R/o Near Gaytri Temple, Bap, Distt: Jodhpur(Petitioner) have unearthed who have been nominated vide DDR No 51 Dated: 19-6-2021. Accused Rana Singh who used to contact with both the drug peddlers including petitioner through their mobile phones no. 96025-81722 found registered in the name of accused Ghamda Ram and present petitioner has established owner of mobile no. 77420-99320 used to contact with said Rana Singh for drug deals. The photograph of petitioner obtained from application form of this mobile number and identified by Rana Singh. As per the information shared by Rana Singh he has been supplied poppy husk by present petitioner”.

7. Thus, there is evidence of call details and the petitioner did not explain the reasons for such calls.

8. The co-accused was granted regular bail and one of the considerations was the period of custody. As far as the petitioner is concerned, the status report explicitly mentions that the petitioner did not co-operate in investigation and mobile phone along with the SIM used by him is yet to be recovered, which would be one of the main corroborative evidence. 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.

9. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for anticipatory bail under section 438 CrPC.

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. Interim protection dated 25-2-2022 is withdrawn with immediate effect. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

Apr 02, 2022
sonia arora

Whether speaking/reasoned: Yes
Whether reportable: **No.**