

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6671-2020
Reserved on: 18.04.2022
Pronounced on: May 10, 2022

Surinder Kumar @ Kaka ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jaideep Verma, Advocate for the petitioner

Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0085	05.04.2019	Sadar Khanna, Punjab	22, 61 of NDPS Act, 1985

1. The petitioner, incarcerated upon his arrest for possessing 9440 capsules, which is a commercial quantity of intoxicating tablets, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), has come up before this Court under Section 439 of CrPC, seeking bail.
2. In paragraph 9 of the bail petition, the accused declares that he has no criminal antecedents.
3. On April 05, 2019, the police party on patrol duty, noticed two persons sitting under a bridge, with a bag. On noticing the police, they threw the bag and tried to flee but were apprehended. The search of bag led to the recovery of 9440 tablets, containing Tramadol, prohibited under NDPS Act.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
5. 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:

6. The substance involved in the present case is 'Tramadol'. Entry no. 238 ZH of the table specifying small and commercial quantities specifies the quantity greater than 250 grams as commercial quantity and lesser than 5 grams 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.

7. 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. 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. Thus, the petitioner has failed to make a case for bail at this stage.

8. 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.

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

May 10, 2022
Sonia arora

Whether speaking/reasoned: Yes
Whether reportable: No.