

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10008-2022
Reserved on: 22.04.2022
Pronounced on: 16.05.2022

Jagroop Kaur
...Petitioner(s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Ruhani Chadha, Advocate
for the petitioner.
Mr. H.S. Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
110	18.05.2021	Model Town, District Hoshiarpur	21, 29, 60 NDPS Act and Section 18 NDPS Act (added later on)

1. The petitioner, incarcerated upon her arrest for possessing 100 grams of heroin and getting 1 kg and 430 grams of heroin recovered from the wardrobe of the co-accused Jasvir Singh, who is a habitual offender, with whom she is living, has come up before this Court under Section 439 of CrPC, seeking bail.
2. In paragraph 17 of the bail petition, the accused declares that she has no criminal antecedents.
3. Based on the disclosure statements of the accused, who were nabbed for possessing 70 grams of heroin (45+25), the police apprehended the petitioner and recovered 100 grams of heroin from a packet which she was holding in her hand. Subsequently, on her statement, the police recovered 1 kg and 430 grams of heroin and 580 grams of opium, 560 gold and silver articles, and half a crore of rupees in cash from the almirah of Jasvir Singh, with whom she lives.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. Ld. counsel representing the State opposes bail on the ground that the allegation against the petitioner are serious and the quantity of the alleged contraband recovered in the case is huge.

REASONING:

6. The substance involved in the present case is Heroin [Diacetyl morphine], and weighs 100 grams from her possession and 1430 grams at her instance. The entry no. 56 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, to find out the evidence against the petitioner which led to the recovery of commercial quantity of heroin, it was for the petitioner to have filed complete copy of the police report, filed under section 173 CrPC, and its copy received by her under Section 207 CrPC.

7. As per State's contention, the quantity recovered from the petitioner falls in the category commercial quantity. The petitioner has not stated anything to discharge the burden put by the rigours of S. 37 of the NDPS Act.

8. The petitioner has not stated anything to discharge the rigours of Section 37 of the NDPS Act. 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. Thus, the petitioner has failed to make out a case for bail.

9. In the present case, since the alleged quantity of the contraband recovered from the main accused falls in 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, which she has failed to do.

10. A perusal of the bail petition reveals that some documents of the challan have been annexed but the complete report has not been attached thereto. Despite that the copy of the police report under section 173 CrPC has not been annexed with the petition. It is not the case of the petitioner that she has not received the report under Section 207 CrPC.

11. Had the accused not received the documents in compliance with S. 207 CrPC, this Court would have certainly asked the respondent to produce the same. However, the petitioner does not claim the non-receipt of the challan. The accused receives copies of the Police report and the copies of the statements of witnesses free of cost.

12. The allegations in the case are serious and the offence is heinous. To decide the bail petition on merits would require this Court to peruse the evidence collected by the prosecution. The petitioner has neither annexed the copy of the police report filed under Section 173(2) CrPC, nor does she say that the Trial Court did not supply the same to her under Section 207 CrPC. There is no ground pleaded or explanation offered regarding reasons that constrained the petitioner from annexing those documents while filing the petition. Thus, the Court cannot decide the bail petition.
13. The stand that the accused is a woman and 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.
14. Given above, in the facts and circumstances peculiar to this case, the petition is closed. However, the petitioner shall be at liberty to file a fresh petition on the same cause of action by annexing a copy of the police report and all necessary documents.
15. 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 16, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.