

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10216-2022
Reserved on: 30-03-2022
Pronounced on: 31-03-2022

Vishal Kumar @ Bhundi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Avtar Singh Bhatti, Advocate for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0136	31.12.2021	Kalanaur, District Gurdaspur	25(8) of Arms Act and Sections 21©, 25, 27(a) & 29 of NDPS Act (Sections 22 & 29-A of NDPS Act added later on)

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Although in paragraph 8 of the petition, it is declared that the accused has no criminal history; however, as per paragraph 6 of the status report filed through Deputy Superintendent of Police, Kalanaur, District Gurdaspur, the petitioner has following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	26	19.03.2016	366, 511 & 506 IPC	Dinanagar (Cancelled)
2	127	03.06.2020	21/61/85 of NDPS Act	Dinanagar (pending)
3	153	07.08.2021	21/61/85 of NDPS Act	Dinanagar (pending)
4	58	12.03.2020	21/61/85 of NDPS Act	Dinanagar (convicted)
5	21	30.04.2019	21/61/85 of NDPS Act	Taragarh(pending)
6	95	17.11.2017	21/61/85 of NDPS Act	Sadar Gurdaspur (acquitted)
7	51	31.03.2017	379-B, 411 & 34 IPC	Dinanagar (convicted)
8	60	18.05.2016	61/1/14 of Excise Act	Dinanagar (pending)

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. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

6. A perusal of the petition does not refer to any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior. Apart from this, the allegations

7. 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.

8. It would also be appropriate to refer to the paragraph 3 of the status report which reads as follows:

“That it is humbly submitted that the brief facts of the case are that ASI Ravinder Kumar, CIA Staff Gurdaspur was recorded his statement to ASI Baljinder Singh, Incharge Police Post Dosatpur, Police Station Kalanaur on 31.12.2021 that he alongwith police party search to the bad elements in the area of Police Station Kalanaur. During patrolling duty and checking of suspected persons when going towards village Kalanaur from village Rudiana, then near T-Point Rudiana secret information was received that Amandeep Singh @ Aman, Anmolpreet Singh, Charlas Masih @ Bitta who are in Lancer Car No. PB-08-BB-3588 are coming from Dera Baba Nanak side towards Kalanaur and if checking be done by conducting Nakabandi at T-Point Rudiana turning point then from the three said persons illegal weapons and intoxicant substance may be recovered. Accordingly, at T-Point Rudiana Nakabandi was conducted and during checking after 25/30 minutes, one Lancer Car from the side of Dera Baba Nanak came which was stopped by giving signal. The driver of the Car apprehended who tried to throw away one envelope. On the adjoining seat of the driver one person was sitting and on the rear seat one person was also sitting. Driver disclosed his name Amandeep Singh @ Aman. The person who was sitting on the adjoining seat with the driver disclosed his name Anmolpreet Singh

and third person who was sitting on the rear seat of the car disclosed his name Charlas Masih @ Bitta. ASI Baljinder Singh informed to Sh. Kulwinder Singh, PPS, Deputy Superintendent of Police, Rural, Gurdaspur was also called. The DSP/Rural/Gurdaspur visit at the spot and disclosed his name and rank to the said persons. In the supervision of said DSP, the search of said persons, one envelope containing 281 gms intoxicant powder was recovered from driver Amanpreet Singh @ Aman and from the left dub of his trouser one country made pistol 30 bore alongwith magazine in which six live cartridges of 30 bore were also recovered which were taken into police possession. From Anmolpreet Singh one 32 bore magazine alongwith three live cartridges of 32 bore from the right pocket of his trouser were recovered which were taken into police possession. On search of the Charlas Masih @ Bitta one country made Katta 315 bore from his right dub of trouser alongwith two live cartridges were recovered. From the dash board of the Car No. PB-08-BB-3588 Rs. 1,00,000/- cash alongwith 15 live cartridges of 30 bore and one magazine 30 bore were recovered and above intoxicant powder, arms, cash and vehicle were taken into police possession. During the verification, Amandeep Singh @ Aman stated that the drug amount was purchased from Vishal Kumar @ Bhundi (Petitioner) and Ramandeep Singh for sale the narcotic. Hence, a case FIR No. 136 dated 31.12.2021 under section 21(C)/25/27(A)/29/61/85 NDPS Act and 25(8)/54/59 Arms Act Police Station Kalanaur was registered against the Amandeep Singh, Anmolpreet Singh, Charlas Masih @ Bitta, Vishal Kumar @ Bhundi (Petitioner) and Ramandeep Singh and Amandeep Singh @ Aman, Anmolpreet Singh and Charlas Masih @ Bitta was arrested in this case on 31.12.2021."

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 rigours of S. 37 of the NDPS Act.

10. 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.

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

Mar 31, 2022
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.