

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8453-2020
Reserved on: 02.03.2022
Pronounced on: March 09, 2022

Bajrang Lal ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ranbir Singh Sekhon, Advocate for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
128	13.09.2019	Khuian Sarwar District Fazilka	22/61 of NDPS Act. 1985

1. The petitioner, incarcerating upon his arrest has come up before this Court under Section 439 CrPC, for possessing a commercial quantity of Tramadol Hydrochloride, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), seeking bail.
2. In paragraph 13 and 21 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. The quantity of contraband allegedly recovered from the petitioner as per State’s contention is 4911.96 grams of Tramadol Hydrochloride, where in the quantity greater than 250 grams falls in the category of commercial. Given this, 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. Ld. counsel places reliance upon the bail order of co-accused passed in CRM-M-40868-2020 Amandeep v. State of Punjab and seeks bail on parity. A perusal of the said order reveals that the court granted bail to him because as per the unrebutted submissions of the counsel and as per the prosecution, Amandeep, the co-accused, was driving the motorcycle whereas the petitioner herein Bajrang Lal who was the pillion rider, was sitting on the back seat and was carrying the carton in his lap. The court also took into account the fact the age of Amandeep being just 20 years as a factor for granting bail, and the court did not grant bail after considering the rigors placed by section 37 of the NDPS Act. The petitioner was allegedly carrying a carton containing contraband and aged 31 years. Thus, the petitioner is not entitled to bail on the grounds of parity.

7. The stand that the accused is 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.

8. The grounds taken in the bail petition about violation of the mandatory provisions of S. 42 & 50 are not made out at this stage in this case and 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. Thus, the petitioner has failed to make out 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

March 09, 2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.