

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13787-2022
Reserved on: 28.07.2022
Pronounced on: 04.08.2022

Subhash ...Petitioner

Versus

Narcotics Control Bureau Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Prabhjeet Singh Sullar, Advocate for the petitioner.

Mr. Rajeev Sharma, Advocate for the respondent.

ANOOP CHITKARA, J.

Case Crime No.	Dated	Police Station	Sections
72/2021	17.11.2021	Narcotics Control Bureau Chandigarh Zonal Unit Electrical Store Building, Sector-25, Chandigarh	8, 20, 29, 27-A & 60 of NDPS Act

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as per the details captioned above, had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. On Nov 17, 2021, a team of NCB had recovered 3.540 kg of charas from Noor Dass and Rishi Pal. During the interrogation of these accused, they disclosed the petitioner as brother of person apprehended with drugs, from whose account the money was transferred for purchase of drugs.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. Ld. counsel representing the NCB opposes the bail.

REASONING:

5. The substance involved in the present case is Charas, and weighs 3.540 kg. Entry no. 23 of the table specifying small and commercial quantities specifies the quantity greater than 1 kg as commercial quantity and lesser than 100 grams as small. Thus, the quantity allegedly involved in this case is commercial. However, the evidence against the petitioner Given this, the rigours of S. 37 of the NDPS Act apply in

CRM-M-13787-2022

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. The petitioner offers explanation in para 4 of the bail petition, which reads as follows:

“(4).That the statement under Section 67 NDPS Act 1985 was recorded of accused Rishipal. The basis which has been made for the indictment of the petitioner is reproduced hereunder:-

Ques 10: How did you gave money to Bakshi Ram at the last time?

Ans 10: Last time I transfer Rs.1,26,000/- from my brother HDFC account No.50100282729395 to Bakshi Ram.

From the perusal of the above statement, which has been basis for indictment, from nowhere it is inferred or manifest that the petitioner being involved in the financing or transferred the amount for the said alleged purpose rather it is the accused Rishipal who transferred the amount from his brother account to Bakshi Ram being operated by the Rishipal.”

7. A plain and simple reading of this explanation offered in para 4 nowhere states how and from when the petitioner’s brother Rishipal was operating his account and why. The petitioner is banking upon the answer given by the other accused without stating how was such a statement prima facie truthful. Thus, the explanation is false and not probablized. Given the legislative mandate under section 37 of the NDPS Act, an accused is not entitled to bail if the quantity is marginally above the commercial quantity.

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

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. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

04.08.2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.