

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16511-2021
Reserved on: 21.04.2022
Pronounced on: 11.05.2022

Prem Masih
...Petitioner(s)
Versus
The State of Punjab
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Charanpreet Singh, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
102	7.10.2019	STF Phase 4, Mohali, District Ludhiana	21 NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing 780 grams of heroin, which fall in the commercial quantity, 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 11 of the bail petition, the accused declares that he has no criminal antecedents. However, as per the status report, the petitioner has following criminal history:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	32	18.2.2002	420, 467, 468, 471, 379, 411 IPC	--
2.	102	30.7.2001	379, 411 IPC	Sahnewal, Ludhiana
3.	169	--	411 IPC	Malla Wala, Ferozepur
4.	80	8.9.2002	411 IPC	Kant, Ferozepur
5.	98	--	379,411,420,467,468,471 IPC	--
6.	24	20.3.2007	379 IPC	Sadar Moga
7.	35	2007	379 IPC	Bilaspur
8.	40	4.3.2007	379 IPC	Adampur, Jalandhar.

3. Briefly stated, as per the case of the prosecution, on 7.10.2019, a phone call was received from a secret informer by the police party patrolling near Samrala Chowk Bus Stop, Delhi Road that the petitioner, who is indulging in selling of drugs from long time, is going to supply heroin to his customers towards Transport Cut, Ludhiana side on his three wheeler No.PB-10GX-9026 and if barricading is done at the turn of Street No.0, Mohalla Beantpura, then he can be apprehended. Accordingly, a *naka* was laid and the petitioner was apprehended by the police party along with his three wheeler. On search of his three wheeler, recovery of 780 grams heroin was made.

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 petitioner is a habitual offender.

REASONING:

6. The substance involved in the present case is Heroin [Diacetyl morphine], and weighs 780 grams. 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. As per State's contention, 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. 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.

7. The petitioner's main assertion for bail is non compliance of section 42 of NDPS Act. Ld. counsel has drawn attention of this court to the pronouncement of Hon'ble Supreme court, in case title, Darshan Singh v. State of Haryana, (2016) 14 SCC 356, wherein it was held that sending of copy of FIR to the superior officer is not the compliance of section 42 of NDPS Act. However, in this case, as per the status report, the State's response is that apart from FIR, information was also sent to superior officers. To controvert this stand, it was incumbent upon the petitioner to have annexed the entire report of 173 CrPC.

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 he has failed to do.

10. Indisputably, the challan stands filed. Despite that the copy of the police report under section 173 CrPC has not been annexed with the appeal. It is not the case of the petitioner that he 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 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 he say that the Trial Court did not supply the same to him under S. 207 CrPC. There is no ground pleaded or explanation offered regarding reasons that constrained the petitioner from annexing those while filing the petition. Thus, the Court cannot decide the bail petition.

13. 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 new petition on the same cause of action by annexing a copy of the police report and all necessary documents.

14. 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 11, 2022
AK

Whether speaking/reasoned:
Whether reportable:

Yes
No.