

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16020-2021
Reserved on: 14.03.2022
Pronounced on: 21.03.2022

Paramjit Singh @ Harinder ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ajay Pal Singh Rehan, Advocate for the petitioner.

Mr. H.S. Multani, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
93	06.10.2020	Garhdiwala, District Hoshiarpur	15(c) of the NDPS Act (25 and 29 of the NDPS Act added later on)

1. The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, for possessing a commercial quantity of poppy husk, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act).
2. In paragraph 13 of the petition, it is declared that the accused has no criminal history of NDPS Act.
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 allegedly involved is 275 kg of poppy husk. The substance finds mention at entry no. 110 of the table specifying small and commercial quantities, as per which the quantity greater than 50 kgs falls in commercial quantity and lesser than 1 kg as small. Thus, 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.

6. The police had recovered the poppy husk from the truck being driven by the petitioner. He even tried to flee but was nabbed. Although the co-accused was released on bail by a co-ordinate bench of this court, but a perusal of such order passed in CRM-M-43224-2020 Navdeep Singh v. State of Punjab, decided on 16-3-2021, reveals that he was granted bail because he was conductor of the truck and his knowledge about contraband was a debatable issue. Thus, the petitioner is not even entitled for 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 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. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage. However, it shall be open for the petitioners to file fresh bail applications in changed circumstances or after recording the statements of witnesses other than formal witnesses, whichever is earlier. The dismissal of this petition shall not come in the way while considering the fresh petition(s).

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

21.03.2022

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.