

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16376-2021 (O&M)
Reserved on: 13.09.2022
Date of Pronouncement: 29.09.2022

Balkar Singh
...Petitioner (s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Vijay Lath, Advocate for the petitioner(s).
Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
13	23.1.2020	Lalru, District SAS Nagar (Mohali)	22 NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing 5520 tablets containing 347.76 grams of Diphenoxylate Hydrochloride, which as per FSL report, and as per the prosecution is a commercial quantity, kept in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), had come up before this Court under Section 439 of CrPC, seeking bail.
2. In paragraph 10 of the bail petition, the accused declares that he has no criminal antecedents.
3. On 23rd January 2021, based on suspicion, by a chance recovery, the police had recovered the above mentioned stuff for the petitioner's possession.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

REASONING:

6. The substance recovered falls under the NDPS Act with following particulars:

Substance Name *	Diphenoxylate
Quantity detained (in grams) *	347.76
Quantity type	Commercial
Drug Quantity in % of Commercial	695.52%

Notification No	S.O. 1055(E)
dated	19th October, 2001
Sr. No.	44
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Diphenoxylate
Chemical Name	1-(3-cyano-3, 3-diphenylpropyl)-4- phenylpiperidine-4-carboxylic acid ethyl ester
Small Quantity (in gm.)	2
Commercial Quantity (in gm.)	50

7. Since the quantity is commercial, thus, the quantity allegedly involved in this case is commercial. Given this, the rigours of Section 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. The stand that the accused is in custody for sufficient time is also not a legal ground to overcome the rigors of Section 37 of the NDPS Act at this stage.

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 stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. A perusal of the bail petition and the documents attached, *prima facie* points towards the petitioner’s involvement and does not make out a case for bail. Any further discussions are likely to prejudice the petitioner; this court refrains from doing so. Thus, the petitioner has failed to make a case for bail.

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. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

September 29, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.