

CRM-M-16479-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16479-2021
Reserved on: 15-03-2022
Pronounced on: 31-03-2022

Manish Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Arihant Goyal, Advocate for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0101	29.06.2020	Barnala, District Barnala	22 & 25 of NDPS Act

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above had come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In the bail petition, the petitioner did not utter a word about his criminal antecedents. However, as per the status report filed through an affidavit of Deputy Superintendent of Police, Sub Division, Barnala, the petitioner has following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	334	28.08.2019	21/22/25/61/85 of NDPS Act	City Barnala
2	66	03.07.2020	22/25/61/85 of NDPS Act	Rureke Kalan

3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. The contention on behalf of the State is that recovery is yet to take place, the petitioner has criminal antecedents, which he concealed from the court, and bail encourages habitual offenders. While opposing the bail, the contention on behalf of the

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State is that drug menace is rapidly increasing.

REASONING:

5. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

6. In the petition, the petitioner appears to have intentionally conceal his criminal past. A perusal of the petition does not refer to any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior. Apart from this, the allegations

7. Para 6 of the status report reads as follows:

ROLE OF THE PETITIONER MANISH KUMAR

"Accused Jatinder Singh @ Teji and Gursewak Singh were arrested at the spot on 29.06.2020 and during interrogation, accused disclosed that on 29.06.2020, he went to Parwinder Singh, who handed over his car bearing No. HR-51AK-8494 and Rs. 3 lakh to him, then on asking of Parwinder Singh after taking along Gursewak Singh (Bhun's son of Parwinder Singh) went to Delhi and talked with Parwinder Singh, who gave him mobile phone number of Manish Kumar (present petitioner) r/o Delhi. Then he talked with Manish Kumar, who called them at Gaziabad and he took the said car and money from him (Jatinder Singh) and went away. After some time, Manish Kumar (present petitioner) came back and handed over the said vehicle loaded with intoxicant tablets and when they reached Handiaya through Dhanaula, they were apprehended by the Police and 2,00,000 intoxicant tablets were recovered from them. During interrogation, accused Gursewak Singh corroborated the version made by Jatinder Singh during his interrogation. On the basis of disclosure made by both the accused Jatinder Singh and Gursewak Singh, Manish Kumar (present petitioner) S/o Lala Ram r/o Parkash Vihar, ward No.28, Gali No.7, Loni (Gaziabad) was nominated as accused u/s 29 NDPS Act. on 03.07.2020. It is further submitted that on 08.07.2020, Gurtej Singh, Chairman, son of Visakha Singh got recorded his statement before the police that on 07.07.2020, Manjit Singh @ Money son of Soma Singh s/o Nachhattar Singh r/o Khudi Road, Barnala met him and informed him that Parwinder Singh @ Pindi used to handover intoxicant tablets to him for sale and further he used to sell said intoxicant tablets to other people and Parminder Singh used to purchase said medicines from one Manish Kumar (now petitioner) r/o Delhi. So, there are grave and serious

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allegations against the accused/petitioner to have involved in the commission of drug trafficking.”

8. 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.

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 rigours of S. 37 of the NDPS Act.

10. 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.

11. 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

Mar 31, 2022
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Whether speaking/reasoned: Yes
Whether reportable: **No.**