

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19100-2021
Reserved on: 24.02.2022
Pronounced on: 02.03.2022

Vicky Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amit Khatri, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
7	18.01.2021	Sadar Tohana District Fatehabad	22(C) /27-A of NDPS Act, 1985

1. The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, for possessing a commercial quantity of medicines containing Tramadol, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), seeking bail.
2. In paragraph 14 of the petition, it is declared that the accused has no criminal history.
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 quantity recovered from the petition is commercial and the drug menace is rapidly increasing.

REASONING:

5. The quantity of contraband allegedly recovered from the petitioner as per State's contention, falls in the category 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.
6. Based on paragraph 3 of the bail application, Ld. counsel argued that mandatory provision of S. 50 of NDPS Act was not complied with. Ld. Counsel further argued that S.

42 of NDPS Act has not been complied with because the officers who had conducted the search were neither empowered nor authorized. This argument cannot be assessed without going through the police report and documents of search and seizure. The FIR is dated 18-01-2021 and the statutory time to file challan in this case is 180 days. It is not the case of the appellant that he has not receive the report under section 207 CrPC. Despite that the copy of the police report under section 173 CrPC has not been annexed with the petition. The accused receives copies of the Police report and the copies of the statements of witnesses free of cost. 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 allegations in the case are serious and the offence heinous. To decide this submission 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 answer this submission.

7. Ld. counsel further argued that the accused is a first offender and is in custody for sufficient time. However, at this stage these arguments do not overcome the rigours of S. 37 of the NDPS Act.

8. None of the grounds taken in the bail petition shifts 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. 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

02.03.2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.