

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20574-2022
Reserved on: 08.08-2022
Pronounced on: August 23 2022

Ajay Bhutna ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Peeush Gagneja, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0057 Petitioner name added vide GD No.024/30.03.2022	27.03.2022	Lambi, District Sri Muktsar Sahib	22(C) of NDPS

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 paragraph 8 of the bail petition, the accused declares that he has no criminal antecedents.
3. On 27 March 2022, the police had recovered around 10,000/- intoxicating tablets, prohibited under NDPS Act, from Ashok Kumar, who during his interrogation named the petitioner as the seller.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. Ld. counsel representing the State opposes bail.

REASONING:

5. The quantity involved is prima facie commercial. 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.

5. It would be appropriate to refer paras 4 & 5 of the Reply filed by the concerned DySP, District Sri Muktsar Sahib, which reads as follows:

(4) That during the investigation, it was found that the petitioner was using mobile phone having SIM No.98760-75189 and the accused Ashok Kumar was using mobile phone having SIM No 88269-67266 During the investigation, the mobile phone being used by the accused Ashok Kumar, was recovered from the accused Kumar and the same was sent to State Cyber Crime, Phase IV, Mohali for analysis and the analysis report has been received. As per the analysis report No 200-22/CFLAB dated 24.05.2022 there were whatsapp calls between the said mobiles of the accused Ajay Bhutna and Ashok Kumar during the period from 21.03.2022 to 27 03 2022.

(5) That while the accused Ashok Kumar is in judicial custody since 27.03.2022, the petitioner-accused Ajay Bhutna is absconding. The custodial interrogation of the petitioner is required to investigate the case effectively and to find out the modus operandi of the whole operation and commission of crime. In view of heinous crime committed by the petitioner, the petitioner is not entitled to the concession of pre-arrest bail.”

6. The petitioner’s explanation is that the phone calls with Ashok were in connection with CFL bulbs trading; however, the petitioner did not annex any bill or the trading details of CFL with the main accused Ashok, and thus, does not satisfy the requirements of section 37 of NDPS Act.

7. 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. Thus, the petitioner has failed to make a case for bail at this stage.

8. 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.

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

August 23, 2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.