

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24666-2022
Reserved on: 12.09.2022
Pronounced on: 28.09.2022

Sakir ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rahul Jaswal, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
326	31.08.2020	Punhana, Distt. Nuh	20, 61, 85 of NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing a 90 kgs of ganja, which is 5 times more than the commercial quantity, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), has come up before this Court under Section 439 of CrPC, seeking bail.

2. In paragraph 12 of the bail petition, the accused declares that two other FIRs are pending against him, which are as under:-

Sr. No.	FIR No.	Dated	Police Station	Sections
1	226	2021	Jurhara, Distt. Bharatpur (Rajasthan)	3/25 of Arms Act
2	227	2021	Jurhara, Distt. Bharatpur (Rajasthan)	457, 380, 459 & 307 IPC

3. Based on the secret information, on 31st Aug 2020, the police had recovered 90 kgs of ganja, which was concealed in the CNG tanks, and on noticing the police, its driver, the petitioner, and another young boy, whom due to darkness could not be nabbed. They told their names to be Sakir (Petitioner) and Umardraj (A juvenile, who got bail), and the driver's name to be Mahender.

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

5. Ld. counsel representing the State opposes bail.

REASONING:

6. The substance involved in the present case is Ganja, and weighs 90 kilograms. Entry no. 55 of the table specifying small and commercial quantities specifies the quantity greater than 20 kg as commercial quantity and lesser than 1000 gram as small. Thus, the weight of the substance falls in the category of commercial quantity.

7. The petitioner has not stated anything to discharge the rigours of Section 37 of the NDPS Act. Since the alleged quantity of the contraband recovered from the main accused falls in 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, which he has failed to do. 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.

8. The petitioner was arrested on 28-07-2020, and the police report under section 173 CrPC stands filed. The accused receives copies of the Police report and the copies of the statements of witnesses free of cost. It is not the case of the appellant that he has not received the report under section 207 CrPC. Had the accused not received the documents in compliance with S. 207 CrPC, this Court would have asked the respondent to produce the same. However, the petitioner does not claim the non-receipt of the challan. Despite that, the copy of the police report under section 173 CrPC has not been annexed with the appeal.

9. The allegations in the case are serious, and the offence heinous. To decide the bail petition 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. No ground pleaded, or explanation was offered regarding reasons that constrained the petitioner from annexing those while filing the petition. Thus, the Court cannot decide this bail petition.

10. Given above, In the facts and circumstances peculiar to this case, the petition is closed. However, the petitioner shall be at liberty to file a new petition on the same cause of action by annexing a copy of the police report and all necessary documents.

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.

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Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

Given the petitioner’s young age, the trial be expedited.

(ANOOP CHITKARA)
JUDGE

28.09.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.