

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29597-2021
Reserved on: 21.03.2022
Pronounced on: April 22, 2022

Bittu Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gurpal Singh Sandhu, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
124	06.08.2020	Jaittu, District Faridkot	22 of NDPS Act, Section 29 NDPS added later on vide Rapat No.26 dated 08.8.2020

1. The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, for possessing a commercial quantity of Tramadol tablets, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act).
2. In paragraph 10 of the petition, it is declared that the accused has no criminal history.
3. Ld. Counsel for the petitioner contends that the co-accused stands released on bail vide and the petitioner is also entitled to bail on the grounds of parity and further 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 drug menace is rapidly increasing.

REASONING:

5. The quantity of 18500 intoxicant tablets (Tramadol) were recovered from the car no. DL4CAE-3014 and earlier 1500 tablets were recovered from car no. HR-26-BG-3349, wherein the accused named the petitioner as its seller. Thus, the total quantity of tablets would be 20,000 containing Tramadol.

6. The substance involved in the present case is Tramadol. Entry no. 238 ZH of the table specifying small and commercial quantities specifies the quantity greater than 250 grams as commercial quantity and lesser than 5 grams as small. Thus, prima facie, the quantity recovered is much more than the commercial.
7. In the present case, since the alleged quantity of the contraband 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.
8. The petitioner has not stated anything to discharge the rigors of Section 37 of the NDPS Act. 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. Thus, the petitioner has failed to make out a case for bail.
9. The stand that the co-accused has been released on bail is incorrect because vide order dated 7-12-2021, passed in CRM-M-44029-2020, the co-accused arrested for possessing 1500 tablets, recovered from the car, where he was not driving, would not entitle the petitioner bail on the grounds of parity because of the contrary facts scenario. The accused is in custody for sufficient time is also not a legal ground to overcome the rigors of S. 37 of the NDPS Act at this stage.
10. The other 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.
11. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage.
12. 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

April 22, 2022
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Whether speaking/reasoned: Yes
Whether reportable: No.