

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-27097-2022  
Reserved on: 01.08.2022  
Pronounced on: 18.08.2022

Ravinder ...Petitioner  
Versus  
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. K.L. Saini, Advocate for the petitioner.  
Mr. Rajat Gautam, DAG, Haryana.

\*\*\*\*

ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                 | Sections                    |
|---------|------------|--------------------------------|-----------------------------|
| 9       | 11.01.2022 | Garhi, District Jind (Haryana) | 20 (B), 21 (C) 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 Cr.P.C. seeking anticipatory bail.
2. In paragraph 6 of the bail petition, the accused declares that he has no criminal antecedents of NDPS Act.
3. On 11-1-2022, based on a secret information, the police had apprehended Tinku alias Jasvir, and from his possession recovered 258 grams of heroin and 400 grams of charas, who during his interrogation named the petitioner as its seller.
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 weight of the charas is 400 grams which falls in intermediate quantity. However, the second substance involved in the present case is Heroin [Diacetyl morphine], and weighs 256 grams. The entry no. 56 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, the quantity of heroin allegedly

involved in this case is commercial. However, the evidence against the petitioner. 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.

7. In paragraph 3 of the bail petition, the petitioner's stand is that the recovery is not from him and he has been implicated on the basis of disclosure statement.

8. The police have traced various calls between the petitioner and the main accused starting from 5<sup>th</sup> January to 11<sup>th</sup> January, the date of the detection of heroin and charas. A perusal of the petition reveals that there is no explanation for such calls, and in the facts and circumstances peculiar to this case, the argument does not satisfy the requirements of section 37 of NDPS Act.

9. The petition states that the quantity of substance allegedly recovered is marginally above the commercial quantity and the petitioner is aged just 18 years. This submission is more compassionate than legal. Once the quantity is greater than commercial, it is immaterial for the purpose of bail. Once it is in statute, Judges have no latitude. Given the legislative mandate under section 37 of the NDPS Act, an accused is not entitled to bail if the quantity is marginally above the commercial quantity.

10. 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.

11. 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 Cr.P.C.

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**

**18.08.2022**

**Jyoti-II**

|                            |     |
|----------------------------|-----|
| Whether speaking/reasoned: | Yes |
| Whether reportable:        | No. |