

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29633-2020
Reserved on: 07.09.2022
Pronounced on: 29.09.2022

Dharamvir @ Pawan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Chaudhary Manika Ali, Legal Aid Counsel and
Mr. Prabhjot Singh, Advocate for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
07	23.01.2019	Doraha, District Ludhiana	22 of NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing a commercial quantity of tablets containing Tramadol and other intoxicants, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), has come up before this Court under Section 439 of Cr.P.C, seeking bail.
2. In paragraph 6 of the bail petition, the accused declares that he has no criminal antecedents.
3. On 23rd January 2019, the police had recovered a massive quantity of intoxicating substances from the petitioner and his accomplice Honey.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
5. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

REASONING:

6. The prosecution's case is that as per the report of the laboratory the recovered substances fall in the commercial quantities, and the substances were tested as Dicyclomine Hydrochloride; Tramadol Hydrochloride; Acetaminophen; Codeine phosphate; and Chlorpherinamine.; thus, as per the prosecution, the quantity allegedly involved in this case is commercial, and the contention is that the rigours of S. 37 of the NDPS Act apply in the present case; shifting 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. The petitioner's counsel argued that the accused is entitled to bail because of the non-examination of independent witnesses. However, this plea would gather force only when the accused establishes after cross-examination that the police deliberately did not associate any independent witness even when they could have been made available, and in the facts and circumstances peculiar to this case, the argument does not satisfy the requirements of section 37 of NDPS Act.

8. In State of Punjab v Baldev Singh, (1999) 6 SCC 172, the Constitutional bench of Hon'ble Supreme Court holds,

[14]. The provisions of Sections 100 and 165 Cr.P.C. are not inconsistent with the provisions of the NDPS Act and are applicable for effecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure comes across a person being in possession of the narcotic drugs or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from the stage in accordance with the provisions of the NDPS Act. In Balbir Singh's case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of Cr.P.C. in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 *per se* does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view.

9. 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.

10. 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. All pending applications, if any, stand disposed.

Trial be expedited.

(ANOOP CHITKARA)
JUDGE

29.09.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.