

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42470-2021
Reserved on 05.01.2022
Pronounced on: February 03, 2022

Bindu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashish Pal Kaushal, Advocate for the petitioner
Mr. Harsimar Singh Sitta, AAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
116	26.06.2021	City Jagraon, Ludhiana	22 of NDPS Act, 1985

1. The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, for possessing a commercial quantity of salt ETIZOLAM (500 loose tablets and average weight of one tablet was 136 mgs) in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. In paragraph 13 of the petition, it is declared that the accused has no criminal history. However as per paragraph 8 of the status report filed by the police FIR No. 115 dated 10.07.2020, u/s 379-B has been registered in police station Nihal Singh Wala, Moga, against the petitioner.

3. Ld. Counsel for the petitioner contends that the 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 salt ETIZOLAM (500 tablets average weight of one tablet was 136 mgs) allegedly recovered from the petitioner and as per State's contention, falls in the category of commercial quantity. As per para 10 of the Status Report, recovery of the intoxicant tablets from the petitioner is a commercial quantity. The petitioner has not stated anything to discharge the burden put by the rigours of S. 37 of the NDPS Act. The stand that the accused is in custody for sufficient time is also not a legal ground to overcome the rigours of S. 37 of the NDPS Act at this stage.

6. The petitioner has not stated anything to discharge the rigours 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.

7. In the present case, 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.

8. As per paragraph 11 of the petition the challan stands filed. Despite that the copy of the police report under section 173 CrPC has not been annexed with the petition. It is not the case of the appellant that he has not received the report under section 207 CrPC.

9. Had the accused not received the documents in compliance with S. 207 CrPC, this Court would have certainly asked the respondent/State to produce the same. However, the petitioner does not claim the non-receipt of the challan. The accused receives copies of the Police report and the copies of the statements of witnesses free of cost.

10. 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. There is no ground pleaded or explanation offered regarding reasons that constrained the petitioner from annexing those while filing the petition. Thus, the Court cannot decide the bail petition.

11. Given above, in the facts and circumstances peculiar to this case, the petition is dismissed. 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.

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

(ANOOP CHITKARA)
JUDGE

Feb. 03, 2022

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Whether speaking/reasoned: Yes

Whether reportable: No