

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39687-2022
Reserved on: 02.09.2022
Pronounced on: 07.09.2022

Balkar Singh ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Munish Dev Sharma, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
11	12.02.2021	Khilchian, District Amritsar Rural	22 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 15 of the bail application, the accused declares criminal antecedents. Reference to Annexure P-9, i.e., the reply filed by the State in quashing petitioner discloses the following criminal antecedents of the petitioner:

Sr. No.	FIR No.	Date	Offences	Police Station
1	91	16.08.2019	Sections 21, 22, 29, 30 of NDPS Act and 115, 120-B of IPC (1200 intoxicating tablets) (Petitioner is on bail)	Khilchian, Amritsar Rural

3. On 12 Feb 2021, when the police party was patrolling to search bad elements, they notice one person (Balkar Singh), who was walking with the help of a stick, and on noticing the police became perplexed and sat of a parapet. On enquiry, he handed over a bag, which led to the seizure of 590 tablets from a polythene packet from his possession. After arrest Balkar Singh disclosed to the Investigator that he had purchased the tablets from the Chamkor Singh, who was granted bail by this court on the grounds of the sole evidence being disclosure statement. Based on this disclosure statement, the police also arrested Chamkor Singh, the petitioner herein.

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, Ld. counsel representing the State contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

6. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

7. As per FSL report, (Annexure P-4), the total tablets are 590 and average weight of tablet is 206 mg and it contains 0.45 mg Alprazolam per tablet.

8. Thus, the total weight of the substance involved in the present case is Alprazolam, and weighs 121.54 grams. Entry no. 178 of the table specifying small and commercial quantities specifies the quantity greater than 100 grams as commercial quantity and lesser than 5 grams as small. Thus, the quantity allegedly involved in this case is commercial. 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.

9. The petitioner's case is that it is a false case and he has filed a petition for quashing of FIR, which is registered as CRM-M-24941-2021 Balkar Singh v. State and is pending before this court.

10. The State has filed a reply to the quashing petition CRM-M-24941-2021, and it would be relevant to extract paragraphs 5 & 6 of the preliminary submissions, which read as follows:

(5) "That insofar as the affidavits (Annexure P/4 & P/5) obtained in his favour by the petitioner, are concerned, it is submitted that verification has been conducted in this

respect from respectable persons of Village Dhianpur, Amritsar by SHO of Police Station Khilchian, Amritsar Rural. During which, Nishan Singh, Ex-Sarpanch and Nahar Singh of village Dhianpur have produced their sworn affidavits to SHO PS Khilchian, Amritsar Rural whereby stating that the present petitioner is indulging in drug peddling and he is already involved in the aforesaid three FIR. On 12.02.2021 the petitioner was selling drugs at bridge of drain then he was apprehended by SI Tejpal Singh and the present case/FIR No.11 (supra) was registered against the petitioner. The youth and children are getting bad impression of drug peddling by the petitioner and the petitioner has obtained false statements of Shamsher Singh and Onkar Singh and the petitioner is leveling false allegations against SI Tejpal Singh. The affidavits of Nishan Singh and Nahar Singh are annexed herewith as Annexure R-1/T & R-2/T for the kind perusal of this Hon'ble Court.

(6) That it is humbly submitted that keeping in view the totality of the facts and submissions made hereinabove it is evident that though the petitioner is differently able, but he is taking undue advantage of his disability and in the garb thereof he is involved in drug peddling and other criminal activities. The petitioner is a habitual offender and he is already involved in three FIRs involving serious offences. The petitioner was apprehended on 12.02.2021 from the area of bridge drain of village Dhianpur and he was found in his conscious possession of 590 intoxicant tablets. Therefore, the case/FIR No.11 (supra) was registered against the petitioner by SI Tejpal Singh. The petitioner has obtained false affidavits in his favour, whereas respectable persons of village Dhianpur have also verified vide their sworn affidavits that the petitioner is involved in drug peddling and he was apprehended on 12.02.2021 from bridge of drain, village Dhianpur when he was selling drugs. The petitioner has filed the present petition on flimsy grounds besides raising disputed questions of facts, which need not be gone into by this Hon'ble Court at this stage as the same are required to be proved before the learned trial Court by way of leading evidence, in view of the settled principles of law. As such, no cause of action has arisen in favour of the petitioner for quashing the case/FIR No.11 (supra). Therefore, the petition is liable to be dismissed."

11. A perusal of the petition reveals that the petitioner claims to be 75% disabled and states that with such disability, it was not possible for him to walk. However, this explanation is incredible and lacks veracity because nothing has been placed on record to substantiate the plea, except the Disability certificate, Annexure P-5, which only mentions that the petitioner is 75% disabled. The petitioner was not carrying something heavy, but something light and potent. The burden on the accused in commercial quantity is not that light as it can be explained by such sketchy and flimsy explanations. Apart from this, the petition does not refer to any averment based on

which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior. Apart from this, the allegations

12. The petitioner is not entitled to bail on parity because this court had granted bail to Chamkor Singh because the only evidence collected till that date was disclosure statement, whereas the police had recovered the contraband from the petitioner.

13. 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.

14. 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 CrPC.

15. 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

07.09.2022
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.