

CRM-M-43818-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43818-2021
Reserved on: 14.09.2022
Pronounced on: 30.09.2022

Amrik Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Raj Kumar Malik, Advocate for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0179	14.10.2020	Mamdot, Distt. Ferozepur	21, 23, 29, 61 & 85 of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

1. The petitioner, incarcerated upon his arrest on being named as a drug smuggler involved with Pakistan based drug mafia, by the main accused Krishan Singh, from whom on 14th Oct 2020, the police had recovered 9.420 kg of heroin; and after that based on his disclosure statement, on 15th October 2020 discovered another 2.150 kg of heroin, and on being arraigned as an accused in the above captioned FIR, had come up before this Court under Section 439 of CrPC, seeking bail.

2. In paragraph 17 of the bail application and as per the custody certificate, the accused has following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	103	10.09.2018	21, 22, 25, 29, 61, 85 of NDPS Act	Sadar Ferozepur, Distt. Ferozepur
2	1	07.01.2019	21, 23, 29, 61, 85 of NDPS Act	SSOC Fazilka, Distt. Fazilka
3	170	2018	15, 18, 21, 22, 68-C, 8A, 61, 85 of NDPS Act	Sadar Ferozepur, Distt. Ferozepur
4	53	26.07.2017	307, 324, 323 IPC	Kulgari
5	163	15.08.2019	21, 29, 61, 85 of NDPS Act, 25, 54 & 59 of Arms Act	Sadar Ferozepur, Distt. Ferozepur
6	22	2017	8, 21, 29 of NDPS Act	Gajsinghpur (Raj.)
7	35	28.01.2020	52-A of Prison Act	Ferozepur
8	84	29.02.2020	52-A of Prison Act	Ferozepur

CRM-M-43818-2021

3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. Ld. counsel representing the State opposes bail.

REASONING:

5. The substance involved in the present case is Heroin [Diacetyl morphine], and weighs 11.570 kilo 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 weight of the substance falls in the category of commercial quantity.

6. The petitioner has not stated anything to discharge the rigours of Section 37 of the NDPS Act. 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. 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.

7. As per paragraph 8 of the bail petition, the petitioner was arrested on 19-10-2020, and the police report under section 173 CrPC stands filed. The accused receives copies of the Police report and the copies of the statements of witnesses free of cost. It is not the case of the appellant that he has not received the report under section 207 CrPC. Despite that, the copy of the police report under section 173 CrPC has not been annexed with the appeal. Furthermore, had the accused not received the documents in compliance with S. 207 CrPC, this Court would have asked the respondent to produce the same.

8. 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. No ground pleaded, or explanation was offered regarding reasons that constrained the petitioner from annexing those while filing the petition. Thus, the Court cannot decide this bail petition.

9. Given above, In the facts and circumstances peculiar to this case, the petition is closed. 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.

CRM-M-43818-2021

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

(ANOOP CHITKARA)
JUDGE

30.09.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.