

CRM-M-39864-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39864-2020
Reserved on: 07.09.2022
Pronounced on: 27.09.2022

Sohan Lal alias Sonu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Naresh Gopal Sharma, Advocate for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
64	18.03.2020	Gate Hakima, Distt. Amritsar	21, 29 of NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing 500 grams of heroin, which is a commercial quantity, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), has come up before this Court under Section 439 of CrPC, seeking bail.
2. In paragraph 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. Based on the specific prior information naming the accused as carrying huge quantity of heroin, the police after complying with the provisions of NDPS Act and CrPC, confronted the accused, gave them option under section 50 of NDPS Act, and recovered 500 grams of heroin from him.
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 substance involved in the present case is Heroin [Diacetyl morphine], and weighs 500 grams. The entry no. 56 of the table specifying small and commercial quantities, specifies the quantity greater than 250 grams as commercial quantity and

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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.

7. Referring to the petition, the petitioner's counsel submitted that the quantity is marginally above the commercial. A reference to para 6 would reveal that the quantity recovered is 200% of commercial.

8. The stand that the accused is in custody for sufficient time is also not a legal ground to overcome the rigors of S. 37 of the NDPS Act at this stage.

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.

(ANOOP CHITKARA)
JUDGE

27.09.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.