

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39659-2020
Reserved on: 22.03.2022
Pronounced on: 20.04.2022

Rohtash Alias Bokhar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Sukhcharan Singh Gill, Advocate,
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
445	23.07.2020	Barwala, District Hisar	20-C/29/61/85 of NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing a commercial quantity i.e. 80 kg. of ganja, 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 9 of the bail application, the accused declares no criminal antecedents.
3. Ld. Sr. Advocate argued that the alleged recovery is from a court yard and there is no evidence to link the said court yard to the petitioner. Ld. Counsel for the petitioner contends that since the conscious possession of the petitioner over the alleged ganja could not be established as such further 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 to ascertain the query of the court, they have collected a certificate from the concerned Pradhan, as per which the said courtyard was in possession of the petitioner. Quantity of contraband involved in the case falls in the commercial category.

5. Given the counter argument of the State, the argument qua possession cannot be considered at this stage because the recovery was made from the courtyard when the petitioner was present there. Furthermore, a perusal of the bail application reveals that the petitioner nowhere mentioned the location and address of his house so as to distinct the place of the alleged recovery and disconnect the accused from the same.

6. The petition states 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.

7. 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.

8. 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.

9. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage. However, it shall be open for the petitioners to file new bail application(s) in changed circumstances or after recording the statements of witnesses other than formal witnesses, whichever is earlier. If the statements mentioned above are not recorded

within six months, the petitioner may file a fresh bail petition on the grounds of prolonged custody. The dismissal of this petition shall not come in the way while considering the fresh petition(s).

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

20.04.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.