

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39975-2020
Reserved on 08.02.2022
Pronounced on 24.02.2022

Kalu ...Petitioner
Versus
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Sushil Kumar Sharma, Advocate for the petitioner.
Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
330	12.10.2020	Civil Lines Sirsa	22-B, 61, 85 of NDPS Act

1. The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, for possessing a commercial quantity of tramadol, 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 7 & 19 of the petition, it is declared that the accused has no criminal history of NDPS cases or other acts.
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. When the petitioner had filed the present bail petition, the police had filed its report under section 173 CrPC without annexing the report of any laboratory qua the contraband involved. Consequently, relying upon the ratio of the law laid down by a division bench of this court in Inderjeet Singh @ Laddi v. State of Punjab, 2014 (3) RCR, CrI. 953, the co-ordinate bench of this court granted interim bail to the petitioner.
6. Now, as per Id. counsel appearing for the State, the FSL report has come, and the substance tested positive for Tramadol and weighed 570.6 grams. The quantity of Tramadol greater than 250 grams falls in the category of commercial. Thus, as per the State's contention, it falls in 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.

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 8 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 appeal. It is not the case of the appellant that he has not receive 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 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 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.

12. 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 interim orders granting bail stand recalled with immediate effect. Petitioner is directed to surrender within one week from today, in the prison from which he was released. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

24.02 2022
Jyoti-II