

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42039-2022
Reserved on: 19.09.2022
Pronounced on: 23.09.2022

Simran ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Yashpal Thakur, Advocate for the petitioner.
Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
322	21.12.2021	Mandi Gobindgarh, District Fatehgarh Sahib	21-B, 22-C/61/85 of NDPS Act

1. The petitioner, incarcerated upon her arrest for possessing a commercial quantity allegedly of Tramadol, 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 8 of Note-II of the bail petition, the accused declares that she has a criminal antecedent.

Sr. No.	FIR No.	Dated	Police Station	Sections
1.	49	25.02.2020	Mandi Gobindgarh, District Fatehgarh Sahib	21/65/85 of NDPS Act.

3. The police had recovered 1200 loose tablets containing Diphenoxylate Hydrochloride and 52 grams of heroin from the bike, on which the petitioner was a pillion rider.

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

5. Ld. counsel representing the State opposes bail.

REASONING:

6. As per State's contention, the quantity falls in the category of commercial. 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. The challan under section 173 Cr.P.C. stands filed. Despite that the copy of the police report under section 173 Cr.P.C. has not been annexed with the appeal. It is not the case of the appellant that he has not received the report under section 207 Cr.P.C.
9. Had the accused not received the documents in compliance with S. 207 Cr.P.C., 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, especially to know the evidence collected by the prosecution to the effect that whether the recovery was from the driver of the bike or the petitioner is prima facie connected with the contraband. The petitioner has neither annexed the copy of the police report filed under Section 173(2) Cr.P.C., nor does he say that the Trial Court did not supply the same to him under S. 207 Cr.P.C. 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 with liberty reserved. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

23.09.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.