

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46711-2021
Reserved on 13.12.2021
Pronounced on: February 08, 2022

Robin Chawla ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Randeep Singh Waraich (Rana), Advocate for the petitioner.
Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
101	16.06.2021	Doraha, District Ludhiana	22 of the NDPS Act.

1. The petitioners, incarcerating upon his arrest has come up before this Court under Section 439 CrPC, for possessing a commercial quantity of Diaphenoxylate Hydrochloride salt (5520 intoxicant tablets would come to 353.280 grams) 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 10 of the petition, it is declared that the accused have no criminal history.
3. Ld. Counsel for the petitioners contends that there is no evidence of conscious possession from the petitioner.
4. While opposing the bail, the contention on behalf of the State is that the quantity is commercial.

REASONING:

5. The quantity of 353.280 grams of Diaphenoxylate Hydrochloride salt (5520 intoxicant tablets) allegedly recovered from the petitioner and as per State's contention, falls in the category 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.

6. 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 petitioners to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act, which they have failed to do.

7. As inferable from the petition, the challan stands filed. Despite that only summary of police report has been annexed but none of the documents annexed with the report, e.g., 161 CrPC statements, recovery memos, FSL report etc, have not been annexed. It is not the case of the petitioners that they had not received the report under section 207 CrPC. 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. 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.

8. 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 petitioners do 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.

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

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

(ANOOP CHITKARA)
JUDGE

February 08, 2022
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Whether speaking/reasoned: Yes
Whether reportable: No.