

CRM-M-42977-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42977-2020
Reserved on: 06.01.2022
Pronounced on: 08.02.2022

Bikkar Singh @ Bikkari ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. J.S. Khiva, Advocate for the petitioner(s).

Mr. Harsimar Singh Sitta, Asst. AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0201	02.09.2020	Bhikhi, District Mansa	22/25 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 intoxicant tablets, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act).
2. In paragraph 14 of the petition, it is declared that the accused have no criminal history.
3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family. He has raised various points which this court shall consider one by one.
4. While opposing the bail, the contention on behalf of the State is that drug menace is rapidly increasing.

REASONING:

5. Learned counsel for the petitioner argued that the sample was not sent within 72 hours. To this, the response of the State is that due to COVID-19 restrictions, it could not be done and a delay explanation has been offered in para 2(i) of the reply. Since this explanation needs appreciation during the trial as such this Court refrains from making any observations on this but needless to say that the delay in not sending sample does not appear intentional. As such, the petitioner cannot get any benefit at this stage. Learned counsel further argued that two samples were required to be sent but only one was sent. As per the response of the State, the laboratory was able to

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give its opinion about the intoxicants tablets just based on one sample. Thus, as such this argument by petitioner's counsel is not sufficient to discharge the burden placed by the Legislature under Section 37 of NDPS Act. Learned counsel argued that the sample should be minimum 5 grams but in the present case sample sent was less than 5 grams. The answer to this proposition that laboratory opinion's a whatever sent to it whether it is less than required violates or is an irregularity or illegality would be a question to decide during trial and not at the stage of deciding bail application.

5. As per State's contention, recovered contraband 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 petitioner 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 although the petitioner has annexed summary of police report but has not annexed the FSL report and recovery documents, 161 CrPC statements. 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
anju rani

Whether speaking/reasoned:	Yes
Whether reportable:	No.