

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47627-2021
Reserved on: 01.04.2022
Pronounced on:28.04.2022

Gursewak Singh @ Baggi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. N.S. Dandiwal, Advocate for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
133	17.09.2021	Badhni Kalan, District Moga	22 of the NDPS Act, 1985

1. The petitioner, incarcerated upon his arrest for possessing a commercial quantity of Etizolam, 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 20 of the bail petition, the accused declares that he has no criminal antecedents.
3. As per prosecution, the petitioner, on noticing the police party, threw a packet and tried to escape; however he was nabbed and on opening the transparent packet, strips containing in all 250 tablets were found.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
5. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

REASONING:

6. The substance involved in the present case is Etizolam, and the quantity 250 tablets. As per status report, the quantity falls in commercial category. Entry no. 238ZZC of the table specifying small and commercial quantities specifies the quantity

greater than 2.5 grams as commercial quantity and lesser than 0.05 gram as small. Thus, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. The petition states that the accused is entitled to bail because the recovery is from the ground and not from him. However, this plea would gather force only when the accused establishes after cross-examination that the police deliberately implicated the petitioner, and in the facts and circumstances peculiar to this case, the argument does not satisfy the requirements of section 37 of NDPS Act.

8. The petitioner's next argument is that as per prosecution, the tablets were in a transparent polythene packet, and it is highly improbable that any person would carry tablets in a transparent packet. Although, this argument is impressive but it is to be seen during the trial that before throwing on the ground, was the accused carrying it in his hands or had taken it out from his clothes. Be that as it may, this submission cannot be considered to override the restrictions placed by the legislature under section 37 of NDPS Act.

9. 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.

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

28.04.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.