

CRM-M-52218-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52218-2021
Reserved on: 14-09-2022
Pronounced on: 16-09-2022

Bhagwan Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. J.S. Jaidka, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
352	16.08.2020	City Tohana, Distt. Fatehabad	22-C, 27-A & 29 of NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing a massive commercial quantity of tablets containing 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 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. On 16th Aug 2020, the police party headed by SI Sadhu Ram was checking vehicles at Tohana. At that time, they noticed a Maruti car where two young boys were sitting. The Police officials signaled the car to stop, but it sped away, and when chased, they abandoned the car on the street at Tohana. The police could not catch the occupants of the car. In search of the car, the Investigator recovered a large number of tablets, which later on were tested by the laboratory to contain Tramadol, and the total quantity of tablets weighed 16.368-kilograms. During the investigation, the police got information from one Jaswant that he had seen two boys running in the field, and one was shouting at the other, saying Bhagwan Singh, take me along with you. Later on, the police recovered an affidavit (Annexure R-10), which showed that the car from which the police had recovered intoxicants was in possession of Bhagwan Singh by way of an affidavit in June 2020, and Bhagwan Singh gave the affidavit that he had taken the car's possession and he shall be responsible for all taxes, etc.

CRM-M-52218-2021

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 quantity allegedly involved in this case is commercial. Given this, the rigors 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 evidence against the petitioner Bhagwan Singh is that the car from where the police had recovered a massive haul of intoxicating tablets was owned and possessed by him, and of the two boys who were running, Jaswant had heard one boy calling the other by shouting that Bhagwan Singh, take him along.

8. Ld. counsel for the petitioner submits that the petitioner is entitled to bail on violation of section 42 of the NDPS Act because the recovery was shown after Sun Set, and the mandatory provisions of Section 42 were not complied with. This evidence can only be ascertained after the examination of the concerned witnesses and not at their back at this stage. Thus, the petitioner is not entitled to bail on this ground.

9. Ld. counsel for the petitioner submits that the petitioner is entitled to bail on the ground that the car number of the private car in which the police were traveling has not been mentioned. To appreciate this argument, the witnesses have a right to explain the same during their examination in court and not at this stage.

10. 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.

11. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail.

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. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

Sep 16, 2022
anju rani

Whether speaking/reasoned:	Yes
Whether reportable:	No.