

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53748-2021
Reserved on 06.1.2022
Pronounced on February 03, 2022

Rajesh Kumar Saw ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Saini, Advocate for the petitioner

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
78	01.03.2021	IMT Rohtak, District Rohtak	18 (C), 29 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 opium, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act).
2. In paragraph 16 of the petition, it is declared that the accused has 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.
4. While opposing the bail, the contention on behalf of the State is that drug menace is rapidly increasing.

REASONING:

5. The quantity of opium allegedly recovered from the vehicle in which the petitioner was travelling is 3 kg and 20 grams. The quantity greater than 2.5 kg falls in the category of commercial.
6. The petitioner has placed reliance on paragraph 8 of the petition and stated that he was traveling in the car; no recovery was made from him and he was not aware of

the contraband present in the said car. This explanation is cryptic. In case the petitioner wants bail by rebutting the statutory presumption under Section 37 of the NDPS Act, it was for him to explain at which place and at which time he got the car; that whether the contraband had already been kept in the car prior to the said time or it had been handed over by other person and driver brought out the same in the car. It was also for the petitioner to explain why did he sit in the car and where he was going?

7. Thus, 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.

8. 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.

9. Given above, the petitioner fails to make out a case for bail.

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

(ANOOP CHITKARA)
JUDGE

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