

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6688-2020
Reserved on: 07.09.2022
Pronounced on: 28.09.2022

Rozettee Namuteby ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gursimran Singh, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
48	21.01.2018	Sadar Jagraon, Ludhiana Rural	21 of NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing a commercial quantity of heroin, 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 11 of the bail petition, the accused declares that she has no criminal antecedents.
3. On 21st Jan 2018, the police had recovered 1.5 kg of heroin.
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 Heroin [Diacetyl morphine], and weighs 1.5 kilo grams. The entry no. 56 of the table specifying small and commercial quantities, specifies the quantity greater than 250 grams as commercial quantity and lesser than 5 grams 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 petitioner seeks bail because she belongs to Uganda and did not understand the language of the police; as such, all the procedural compliances violate the laws. If the contention of the petitioner’s counsel is to be considered without understanding the concept, then bail can never be refused to a deaf accused. The police had recovered 1.5 kg of heroin from the petitioner’s bag, and she had concealed the heroin in polythene packets stuffed in the fish by making cavities in their shell. The recovery was from a public vehicle, which would prima facie attract section 43 of the NDPS Act and not section 42.

8. 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.

Since the petitioner is a woman, as such the trial be expedited.

(ANOOP CHITKARA)
JUDGE

28.09.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.