

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12694-2023
Reserved on: 08.05.2023
Pronounced on: 15.05.2023

Mohd. Manish @ Kala ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kanwar Inder Singh, Advocate for the petitioner(s).

Mr. Virat Rana, AAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0067	02.03.2022	City-1, Malerkotla	22/61/85 of NDPS Act.

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, on the allegations that on signal of the police to stop the bike the petitioner who was driving the bike, did not stop and tried to flee and in the meantime the pillion rider threw a bag, from which the police recovered 3000 tablets of ALPROZOLAM, further police also recovered 2400 more tablets at the instance of co-accused , has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 5 of the bail petition, the accused declares that he has no criminal antecedent. However, as per para 11 of the status report petitioner has following criminal antecedents.

FIR No.	Dated	Police Station	Sections
22	21.03.2014	City-2, Malerkotla	22/61/85 of NDPS Act.
112	14.10.2017	City-1 Malerkotla	379/411 IPC

3. 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 the quantity of contraband involved in the case falls in the commercial category, and given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

5. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

6. A perusal of the petition does not refer to any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior.

7. 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.

8. The petitioner seeking bail on the ground that at the time when the police allegedly arrested him on the allegations of driving the motor cycle, his leg had fractured and he could not even drive the bike. On the direction of this Court, detailed reply was filed by DySP wherein it was specifically mentioned that at the time of occurrence of crime, the petitioner was not having any fracture on his leg and was driving the motor cycle properly. That before lodging the petitioner in the jail, health screening of the petitioner was got conducted and doctor did not notice any fracture on his leg whereas one old injury on knee was observed. The police also did not notice fracture on his leg. Given the specific stand taken in the reply, it has been observed that the petitioner has tried to mislead the Court. Furthermore, as per para 5 of the petition, the petitioner has no criminal antecedents however, as per reply, the petitioner is involved in two more cases.

9. The petition states that the accused is entitled to bail because of the non-examination of independent witnesses. However, this plea would gather force only

when the accused establishes after cross-examination that the police deliberately did not associate any independent witness even when they could have been made available, and in the facts and circumstances peculiar to this case, the argument does not satisfy the requirements of section 37 of NDPS Act.

10. In State of Punjab v Baldev Singh, (1999) 6 SCC 172, the Constitutional bench of Hon'ble Supreme Court holds,

[14]. The provisions of Sections 100 and 165 Cr.P.C. are not inconsistent with the provisions of the NDPS Act and are applicable for effecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure comes across a person being in possession of the narcotic drugs or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from the stage in accordance with the provisions of the NDPS Act. In Balbir Singh's case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of Cr.P.C. in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 *per se* does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view.

11. The petitioner also seeks bail on the ground of delay in sending the sample. This is also not a ground to grant bail as delay would not vitiate the trial and it is for the petitioner to prove that what prejudice was caused to him.

12. The stand that the accused is in custody for sufficient time is also not a legal ground to overcome the rigors of S. 37 of the NDPS Act at this stage, more so when the petitioner has massive criminal history.

13. 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.

14. A perusal of the bail petition and the documents attached, *prima facie* points towards the petitioner's involvement and does not make out a case for bail. Any further discussions are likely to prejudice the petitioner; this court refrains from doing so.

15. 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.

The petition is dismissed. However, considering the petitioners’ custody, this court requests the concerned trial court to make all endeavours to conclude the trial by Sep 30, 2023, of which the prosecution evidence be completed by Aug 31, 2023, and the remaining time to provide an opportunity to the accused to lead defence evidence, if so desired. It is clarified that this order speeding-up the trial is subject to the condition that neither the petitioner shall seek any adjournment nor try to use any tactics to delay the trial. If they do so, this order of expediting the trial shall stand automatically recalled by resorting to Section 362, read with Section 482 Code of Criminal Procedure, 1973, without any further reference to this court. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

15.05.2023
sonia arora

Whether speaking/reasoned:	Yes
Whether reportable:	No.