

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21714-2023
Reserved on: 01.05.2023
Pronounced on: 17.05.2023

Harpreet Singh @ Laddu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. B.S. Bhalla, Advocate for the petitioner(s).

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
20	03.02.2023	Beas District Amritsar Rural	21 and 27 (a) of NDPS Act

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, on the allegations of possessing 260 grams of heroin, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 12 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	271/2021	16.11.2021	25/54/59 of Arms Act	Beas Amritsar Rural

3. The petitioner’s counsel argued that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. While opposing the bail, the State’s counsel contends that 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history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included.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. NDPS Act makes 260 grams of heroin as a punishable offence and the quantity prima facie commercial, and the rigors of section 37 of NDPS Act would come into operation, shifting the burden to the accused.

7. As per the status report, Annexure P-2, on Feb 3, 2023, the police got a secret information about the petitioner dealing in heroin, and they associated a local person, and proceeded towards the petitioner's home. Noting the presence of police, the petitioner came out, threw a packet, and fled. He local witness identified the said person as the petitioner Harpreet. On opening the packet, the police recovered a substance, which was prima facie indicating heroin. The police also recovered from the petitioner's home, drug money amounting to Rs. 4.29 lacs, which were proceeds of sale of substance.

8. The petitioner offers explanation in bail petitioner, which reads as follows:

- (a) Substance was recovered from outside his house.
- (b). The amount is not drug money.

9. The prosecution's case is that in the presence of a local independent witness, on noticing the police, the petitioner threw a packet and fled, and in the said packet 260 grams of heroin was found. A perusal of the petitioner's explanation does not probabalize anything in favour of the petitioner. The burden on the accused in commercial quantity is not that light as it can be explained by such sketchy and flimsy explanations.

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 anticipatory bail under section 438 CrPC.

12. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

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

(ANOOP CHITKARA)
JUDGE

17.05.2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.