

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30352-2021
Reserved on: 20.02.2023
Pronounced on: 01.03.2023

Harmail Singh @ Harmel Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ishan Gupta, Legal Aid Counsel for the petitioner.

Mr. I.P.S Sabharwal, Dy. A.G. Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0014	25.01.2021	Lambi, District Shri Muktsar Sahib	22 (C) of NDPS Act, 1985

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 of possessing 1950 tablets containing Tramadol, had come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 11 of the bail application, the accused declares one case; however, as per the State, the petitioner stands convicted in the following cases:

Sr. No.	FIR No.	Date	Offences	Police Station
1	105	2013	22/61/85 NDPS Act	Gidderbaha, District Sri Muktsar Sahib
2	85	2013	15 of NDPS Act	--do---

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history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included.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. On Jan 25, 2021, on a chance recovery, the police had seized 1950 tablets of Clovedol 100SR, containing Tramadol Hydrochloride. As per the FSL report, each tablet weighed 404.55 mg and contained 99.23 mg of Tramadol Hydrochloride, which is prohibited under NDPS Act in the following terms:

Substance Name	Tramadol
Quantity detained	788.872 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	315.55%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1762(E)
dated	4/26/2018
Sr. No.	238 ZH
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity (in gm.)	5
Commercial Quantity (in gm.)	250
Disclaimer: You are advised to re-verify all details from the Gazette of India and official notifications	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1761(E)
dated	4/26/2018
Sr. No.	110Y

Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

8. 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.

9. The petition states that the accused is entitled to bail because he was not present at the spot and had filed an application to preserve call details and tower locations, to demonstrate that the petitioner was arrested from his home. This matter needs evidence and 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, 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. Because of the criminal history, the petitioner is not entitled to claim bail for custody of two years.The grounds taken in the bail petition do not shift the burden

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.

12. 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.

13. 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 in terms mentioned above. However, considering the custody, the trial will be expedited, and an endeavor will be made to complete the trial by May 31, 2023. The expediting of the trial is subject to the condition that the petitioner shall not seek any adjournment, and if he does so, this order shall stand recalled automatically under section 362, read with 482 CrPC, without any further reference to this court. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

01.03.2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.