

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1426-2022 (O&M)

Reserved on: 24.01.2023

Pronounced on: 01.03.2023

Harinder Singh alias Bachi

... Petitioner(s)

Versus

State of Punjab

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Ashok Giri, Advocate
for the petitioner(s).

Mr. Virat Rana, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
124	6.10.2020	Special Task Force, Phase-4, SAS Nagar, Mohali	15(c) & 29 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 of having been found in possession of poppy husk, which falls in commercial quantity, has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 16 of the bail application, the accused declared that he had no criminal antecedents. However, as per the reply, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	35	9.4.2020	15/61/85 NDPS Act	Kheri Naudh Singh, District Fatehgarh Sahib
2.	59	24.5.2019	15/61/85 NDPS Act	Sri Chamkaur Sahib, District Rupnagar

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history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included.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 06 October 2022, a police party was present at Phase 3/5 Hcoek, Mohali. At 2:30 p.m., the investigator received secret information that the petitioner and his accomplice, Manpreet Singh alias Manni, regularly bring poppy husk from Rajasthan in a truck. Based on this information, the police registered the FIR. After that, the police erected a barricade and detected the truck, and its search led to the recovery of 75 kg of poppy husk. The police arrested the petitioner Harinder and his accomplice Manpreet Singh alias Manni.

8. The quantity allegedly involved in this case is commercial. Given this, the rigours of Section 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 petitioner concealed his criminal history with a view to take advantage of being clean. Thus, he is not entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (CrI) 6690-2022], decided on 25 Jan 2023. Given the criminal history, the stand that the accused is in custody for sufficient time is also not a legal ground to overcome the rigors of Section 37 of the NDPS Act at this stage.

10. In para 6 of the petition it is stated 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.

11. 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.

12. Ld. counsel for the petitioner submits that it was improbable for the petitioner not to abscond, despite such opportunities being available, and it points out towards the falsity of the prosecution's case. However, such stage would come only during the trial and certainly not at the bail stage, where it would be hit by the maxim *Audi alteram partem*.

13. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under Section 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.

Petition dismissed in aforesaid terms. However, considering the custody of the petitioner since October 06, 2020, the trial be expedited, and an endeavor be made to complete the trial by March 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.

(ANOOP CHITKARA)
JUDGE

March 01, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No