

CRM-M-53135-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53135-2022
Reserved on: 25.04.2023
Pronounced on: 19.05.2023

Om Parkash alias Kaka ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Siddharth Gupta, Advocate for the petitioner.

Mr. Virat Rana, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0050	16.04.2022	City Rampura, District Bathinda	15C of NDPS Act 1985 (offence u/s 29 of NDPS Act added subsequently)

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as per the FIR captioned above, on the allegations of selling 102 kg of poppy straw to Surjit Singh, in his conscious possession, the police had recovered it on 16th April, 2022, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 11 of the bail petition, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	16	13.02.2019	15/61/85 of NDPS Act	City Rampura, District Bathinda

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history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included.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. Section 15 of NDPS Act defines 102 kg of poppy straw as a punishable offence in the following terms:

Substance Name	Poppy straw
Quantity detained	102 Kg
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	204.00%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	110
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Poppy straw
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	1000 Gram (i.e. equivalent to 1 Kg)
Commercial Quantity	50000 Gram (i.e. equivalent to 50 Kg)

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.15 & S.2(xviii) NDPS Act, S.O.821(E)
dated	11/14/1985
Sr. No.	S.2(xviii)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom; S. 2(viib)] “illicit traffic”, in relation to narcotic drugs and psychotropic

	substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances; S.2 (xvii) “opium poppy” means— (a) the plant of the species Papaver somniferum L; and (b) the plant of any other species of Papaver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act; S2. (xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;
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7. Thus, the quantity involved in commercial, and the rigors of section 37 of NDPS Act comes into play, shifting the burden to the accused.

8. After the arrest of Surjit Singh, the police had interrogated him and he had named the petitioner as the seller of poppy straw. The Investigator collected evidence of mobile numbers and was able to get calls between the petitioner and Surjit Singh, during the period of seizure. The details of such calls have been mentioned in page 4 of the status report. In rejoinder to the status report, the petitioner explains such calls and relevant portion of the rejoinder is extracted as follows:

“3. That in response to the above said alleged version of the prosecution, it is submitted that said Surjit Singh was known to the petitioner from last number of years. Surjit Singh was a property dealer and through him, son of the petitioner namely Harish Kumar son of Om Parkash had entered into an agreement to sell dated 29.11.2021 (copy attached) for the plot 20 80.5" Sq. Yards Situated in village Mehraj, Patti Karam Chand District Bathinda, with its original owner Nahar Singh son of Munshi Singh resident of Rampura Phul, District Bathinda. Said Sujit Singh was also a witness to the said agreement to sell. Thereafter, registered sale deed bearing vasika no 2021-22/73/1/3401 was executed on 25.02.2022 for the said plot, in favour of the son of the petitioner. FIR in the present case was registered on 16.04.2022 i.e. after the said sale transactions. This fact clearly demonstrate that due to the said property transactions, petitioner was in touch with the Co-accused Surjit Singh. There is no such illegal activity going on between the petitioner and the main accused

CRM-M-53135-2022

Surjit Singh, as alleged in FIR. Copy of the Agreement to sell is attached herewith as Annexure A-1.

4. That petitioner is also an active member of Truck Union Rampura Phul, Bathinda and is a private transporter. This Surjit Singh used to avail the professional services of the petitioner and for that reason also petitioner was in touch with the petitioner and not otherwise, as alleged by the prosecution.

5. That there is no other message, Chat, call recording or money exchange between the petitioner and the main accused to prove the alleged version of the prosecution.

6. That there is no direct evidence available on the file to connect the petitioner with the commission of the alleged crime as reported in FIR (Annexure P-1).

7. That just on account of the alleged phone call details, the incarceration of the petitioner cannot be said to be justified, especially when the Petitioner has clearly established the reasons to talk with the main accused Surjit Singh, as detailed above.”

9. The explanation is not corroborated by any evidence. Moreover, the petitioner has a criminal history of dealing in poppy straw. A perusal of the aforesaid 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. Apart from this, 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.

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. Interim protection granted to petitioner stand recalled. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

19.05.2023
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Whether speaking/reasoned:

Yes

Whether reportable:

No.