

CRM-M-19939-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19939-2024
Reserved on: 15.05.2024
Pronounced on: 29.05.2024

Baljinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rahi Mehra, Advocate for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
168	20.12.2020	Special Task Force, STF Wing, Mohali	21, 25, 29 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 having 300 grams of heroin, has come up before this Court under Section 439 CrPC seeking bail.
2. As per custody certificate dated 13.05.2024, the accused has no criminal history.
3. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. While opposing bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls into the commercial category, and given the criminal past, the accused is likely to indulge in crime once released on bail.
5. The prosecution’s case is being taken from the reply dated 07.05.2024, which reads as follows:

“5. That during the course of investigation in the present case, the barricading was done at village Burj Pahlu by the investigating officer as well as other police officials and in the meantime, two cutting boys were seen coming on a motorcycle bearing No.PB46-Y-8212 from the side of village Burj and on seeing the police party, the persons on the motorcycle got perplexed and tried to turn their motorcycle but their motorcycle got sliped and the persons went into the street and tried to run but they were

apprehended with the help of police officials and on asking their name, the name of the persons driving the motorcycle disclosed his name and identity as Sarabjit Singh @ Sonu son of Pargat Singh, resident of village Keriyan, Police Station Chohla Sahib, District Tarn Taran and the person sitting behind the driver disclosed his name and identity as Baljinder Singh@ Billu i.e. the petitioner. Thereafter, the investigating officer disclosed his identity to the petitioner as well as aforesaid accused and he further stated that he is having suspicion that they might be having heroin in their possession for which their search as well as search of their motorcycle bearing registration No.PB46-Y-8212 make Bajaj Discover isto be conducted and the investigating officer also apprised them about their legal right that they can get their search as well as search of their motorcycle conducted by any Gazzetted officer or any Magistrate for which the arrangements could be made and thereafter, both the apprehended person stated that they want to get their search conducted from some Gazzetted Officer and thereafter, the investigating officer called the undersigned through phone call and informed him the entire circumstances to him and asked him to reach at the spot and thereafter, the undersigned alongwith his gunman reached at the spot and then the investigating officer disclosed the entire facts to the undersigned and thereafter, the undersigned disclosed his identity to the above apprehended persons and also disclosed to them that he is having suspicion on them that they might be having heroin in their possession and the undersigned also apprised the apprehended persons about their legal rights that they can get their search as well as search of their motorcycle conducted from some other Gazetted officer or any Magistrate for which they can make arrangements and the apprehended persons stated that they are having full faith on him and he can got their search conducted in his presence. Then before conducting the search, the efforts were made to join the public witness in the police party, but nobody joined the same and thereafter on the instructions of the undersigned, the search ofthe apprehended persons and their motorcycle has been conducted and on conducting the personal search of the petitioner namely Baljinder Singh @ Billu, one yellow colored cloth tied by him around his waist and on checking the same, heroin has been recovered and on weighing the same on electronic scale, the same comes to 300 grams of Heroin and on the Indian currency of Rs.600 and one mobile phone make Redmi color black was also recovered from the petitioner and on conducting the search of co-accused Sarabjit Singh @ Sonu, the Indian currency of Rs. 200/- was recovered from him.”

6. Dealing in 300 grams of heroin is a punishable offence under NDPS Act, 1985, in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	300 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	120.00%

CRM-M-19939-2024

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.	56
Common Name (Name of Narcotic Drug and Psycho-tropic Substance (International non-proprietary name (INN)	Heroin
Other non-proprietary name	*****
Chemical Name	Diacetylmorphine
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	11/14/1985
Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psycho-tropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one milli-litre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

7. 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

CRM-M-19939-2024

petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

8. The petitioner's first ground for bail was that it was a case of prior information, and when police saw two persons on the motorbike, they intercepted the bike and accused tried to run, but the police apprehended them. Petitioner's counsel further submits that there are flaws in the story, and the site plan does not mention the corresponding areas of the alleged occurrence. Even, the prosecution did not join any independent witnesses despite the presence of Village Sarpanch and Namberdar.

9. The State's counsel has opposed such arguments and has referred to para 5 of the reply in which it was explicitly mentioned that efforts were made to join public witnesses, but nobody joined the same.

10. Whether witnesses were available and were intentionally not joined is a question of evidence. This Court presumes that police officials, without the investigator's intention, did not join the independent witnesses and thus cannot draw any adverse inference against the prosecution, and liability is no more res integra that police officials are as much as trustworthy as other witnesses provided the other aspect of their story is also credible. Therefore, this is no ground for bail, and the petitioner is not entitled to bail on the grounds of non-association of independent witnesses.

11. Petitioner's next submission for bail is that when the investigator had given the option of Section 50 of NDPS Act for search, then he had opted for the search from Gazetted Officer to which investigator called DySP of their area from a distance of 50 kms from the place of occurrence which is violation of Section 50 of NDPS Act. Petitioner's counsel has referred to the judgment of the Hon'ble Supreme Court of India passed in Criminal Appeal Nos.2239-2240 of 2011 titled Ranjan Kumar Chadha vs. State of Himachal Pradesh, Decided on 06.10.2023.

12. The police had received prior information about the petitioner and his accomplice- Sarabjit Singh, carrying heroin. After the information, the police proceeded to arrest the suspects and consequently caught them. After that, as per the reply, they were given the option for being searched by a Gazetted Officer or a Magistrate, to which the petitioner opted to search by a Gazetted Officer. In the exercise of this, the Investigator called the DySP at the spot where he again asked the petitioner and his accomplice about their satisfaction for being searched by him through which they had stated full faith in him and conveyed their readiness to get themselves searched in their presence. During such search, a cloth was found tied around petitioner's waist, and police recovered heroin from it, which weighed 300 grams. The petitioner's stand is that they

CRM-M-19939-2024

should have called the Gazetted Officer from the nearby area and not from a distance of 50 km. The petitioner has not placed on record to show at what distance the Gazetted Officer was available when he was called.

13. Furthermore, it is a question of cross-examination of how many Gazetted Officers were available in the vicinity, and such inference would be subjective based on the answers given by the witnesses regarding the availability of the Gazetted Officers, which were in the knowledge of the Investigator. A perusal of the judgment passed by the Hon'ble Supreme Court of India in Ranjan Kumar Chadha (Supra) does not apply to bails because the Hon'ble Supreme Court was hearing a criminal appeal. In addition to that fact, it does not apply because the Hon'ble Supreme Court of India had made a specific reference to the above, which was recorded in Section 50 of the NDPS Act. On the other hand, the petitioner did not annex the copy of notice, which was given to the petitioner under Section 50 of the NDPS Act. It is not the petitioner's case that he was supplied a copy of the police report under Section 207 CrPC. Despite supplying a copy of the police report under Section 207 CrPC, if the petitioner wanted to take any benefit from the wrong option under Section 50 of the NDPS Act or the wrong joining of DySP from a distant place, the burden was on the petitioner for such a portion of the investigation in the bail petition, which he did not do. Even otherwise, when the concerned DySP had again asked the petitioner about his objection to being searched at that time, the petitioner did not point out any objection, and this part of the investigation has been explicitly mentioned in para 5 of the reply dated 07.05.2024. Thus, the petitioner is not entitled to bail even on the grounds of non-compliance with Section 50 of the NDPS Act.

14. The petitioner's next ground is that he was not a previous offender and as such he is entitled to bail. To this, counsel for the State submits that the petitioner was granted COVID-19 bail, and after that, he did not surrender and was declared a proclaimed offender. With great difficulty, after nine months, he was forced to surrender. The State's counsel further submits that if the petitioner is again released on bail, there is a likelihood that he will not join the trial. State counsel informs that the trial is going on, and he assures that the Prosecution would not take unnecessary adjournments. By referring to para seven of the reply, State counsel submits that five of the twelve witnesses have already been examined.

15. An analysis of the above does not entitle the petitioner to bail because the quantity involved is commercial. The petitioner must satisfy the rigors of Section 37 of the NDPS Act, which are not satisfied on the above grounds except if the custody was prolonged, which is not the petitioner's case at this stage.

CRM-M-19939-2024

16. Ld. counsel for the petitioner submits that the investigator conducted a search and seizure in violation of sections 42 and 50 of the NDPS.
17. Whether the Investigator complied with the mandatory provisions of sections 42 and 50 of the NDPS Act is a question of fact to be adjudicated in the trial. However, before this court treats the compliances as illegal, the prosecution needs an opportunity to prove that they had complied with the mandatory provisions as per law. Such a stage would come only during the trial and certainly not at the bail stage, where the maxim Audi alteram partem would hit it, unless documents explicitly point toward such a violation. The exception to this would be applicable only when the non-compliance of the mandatory provisions of sections 42 and 50 of the NDPS Act is apparent on the face of the special report under section 57 of the NDPS Act and other documents of search and seizure and in the opinion of the court, the lapse is non-rectifiable, after recording a finding that it is an incurable defect and an illegality, the court might consider granting bail on such violations.
18. The argument that the accused has been in custody for a sufficient time is also not legal grounds to overcome the rigors of S. 37 of the NDPS Act at this stage.
19. The grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden under 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.
20. 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 will likely prejudice the petitioner; this court refrains from doing so.
21. 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.
22. **Petition dismissed.** All the pending applications, if any, stand closed.

ANOOP CHITKARA)
JUDGE

29.05.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: YES.