

225 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.21901of 2024
Reserved On: 04.07.2024
Pronounced on: 16.07.2024

Jasveer Singh ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Sekhon, Advocate for the petitioner
Mr. G.S. Bhullar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
143	07.11.2023	Sadar Jalalabad, District Fazilka	22 of Narcotic Drugs and Psychotropic Substance Act, 1985 (Section 29 of NDPS Act added later on)

1. The petitioner incarcerated for violating the provisions mentioned above of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, on the allegations of having found in conscious possession of a commercial quantity of salt “Tramadol Hydrochloride,” has come up before this Court under Section 439 CrPC seeking bail.
2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
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 thus rigors of Section 37 of NDPS Act apply in this case.
5. The prosecution’s case is being taken from the reply dated 21.05.2024 filed by the concerned DySP, whereby it is submitted that on 07.11.2023, the police party was present for a routine checking on a village road. At that time, they noticed one boy coming and holding a transparent plastic envelope. Seeing the police party, he panicked, threw the envelope on the road, and ran towards paddy fields. There and then, he was apprehended by the police party on suspicion, and he disclosed his name as petitioner- Jasveer Singh. After that, efforts were made to join the witness, but none was found.

Then, the police officers lifted the bag and on search found 100 strips of 10 tablets each of Covidol. Later on, a sample of the contraband was sent for testing, and as per the laboratory report, the tablets contained Tramadol Hydrochloride. As per the prosecution case report, the quantity falls in the commercial category.

6. The investigation/ role of the petitioner is being extracted from the reply dated 21.05.2024 filed by the concerned DySP, which reads as follows:

“Role of Petitioner

6. The petitioner's role in the commission has been established during the investigation of the present FIR. The petitioner was apprehended by police while having 1000 intoxicant tablets. Said recovery of narcotic tablets falls under commercial quantity. Therefore, the petitioner cannot shirk his criminal liability.”

7. Although as per reply, FSL report has been received, its copy is not annexed to the reply. Even perusal of the order of bail by the Sessions Court does not reference the Forensic Laboratory's report. Further, counsel for the petitioner has also not annexed the copy of the FSL report.

8. As such, State counsel submits that the quantity involved in this case falls under the commercial category, and counsel for the petitioner could not prima facie dispute the fact. As such, the petitioner will be permitted to file a fresh bail application after annexing the copy of the FSL report. If the police report has not been supplied to the petitioner, the trial Court must comply with Section 230 of Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023 immediately.

9. The petitioner's counsel submits that once the bag was not recovered from the petitioner's possession, it cannot be said to be found in his possession, moreover, there were no independent witnesses. On the face of it, this argument is contrary to the evidence collected by the police as per which the police had seen the petitioner throwing a bag from which they had recovered tablets containing salt 'Tramadol Hydrochloride,' and the petitioner could not show any license. It is settled law that police officials are also competent witnesses.

10. The stand that the accused is in custody for sufficient time is also not legal grounds to overcome the rigors of S. 37 of the NDPS Act at this stage.

11. 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.

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 will likely prejudice the petitioner; this court refrains from doing so. As such, the petitioner is not entitled to bail. Given the above, the petition is dismissed.

13. However, if the challan has not been filed, it will be filed on priority. If the challan has been filed and the document(s) have not been supplied to the petitioner under Section 207 of CrPC, then it will be supplied to the petitioner immediately under Section 230 of BNSS to enable him to go through the FSL to find out quantity and result of testing by Laboratory and take legal recourse including filing bail petition on the ground of quantity and other points.

14. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

15. The petition is dismissed. All pending applications, if any, stand closed.

Petition dismissed.

(ANOOP CHITKARA)
JUDGE

16.07.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.