

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22015-2024
Reserved on: 16.10.2024
Pronounced on: 25.10.2024

Harjinder Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Zorawar Singh Chauhan, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0298	22.11.2022	Special Task Force, District SAS Nagar	21 of the NDPS Act, 1985 (27 and 29 of the NDPS Act, 1985 added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. Per paragraph 7 of the bail application and per paragraph 8 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	198		Under the NDPS Act	Phillaur
2	245	2017	15 of the NDPS Act	Phillaur, Jalandhar Rural
3	92	2020	188/269/270 IPC and Section 51-B of the Disaster Management Act, 2005	Phillaur, Jalandhar Rural
4	27	2022	21-A of the NDPS Act	Phillaur, Jalandhar Rural

3. The facts and allegations are taken from the reply filed by the State. Initially, on Nov 22, 2022, based on secret information, the police recovered 16 grams of heroin from co-accused Sub Inspector Harjinder Kumar. During his interrogation, he named the petitioner Harjinder Kaur and Rohit Kumar the suppliers. Based on such information, on Nov 23, 2022, the petitioner and Rohit Kumar were arrested. During the petitioner's

search, conducted in the presence of a DySP from her purse, the police recovered 830 grams of heroin. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. FSL tested heroin to have contained Diacetyl morphine.

4. The petitioner's counsel refers to bail petition and specifically to para 2, which reads as follows:-

“2. That the petitioner humbly submits that the facts emerging out of FIR are that on the basis of Secret Information, the Police has apprehended one Sub Inspector Harjinder Kumar, who is in Punjab Police and is allegedly involved in selling Drugs in the Ludhiana area. From the person of SI Harjinder Kumar, 16 Grams of Heroin was recovered.

While in custody, Disclosure Statement of the Main Accused SI Harjinder Kumar was got recorded and in the same the Name of the Petitioner and Rohit was mentioned. Thereafter a recovery of 830 Grams of Heroin was planted upon the petitioner. It has been alleged that the contraband was recovered from the Purse of the petitioner.”

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail and refers to para 5 of the status report, which reads as follows:

“5. That the present petitioner and co-accused Rohit Kumar were arrayed as accused on the basis of disclosure statement of accused Harjinder Kumar. That in his disclosure statement dated 23.11.2022 co-accused Harjinder Kumar stated that he had been purchasing Heroin at the rate of Rs.2800 per gram for the past one year from present petitioner and co-accused Rohit Kumar. The co-accused Harjinder Kumar further stated that the 16 grams Heroin which had been recovered from him on 22.11.2022 had also been bought by him from the petitioner and co-accused Rohit Kumar who had supplied the same to him on the black coloured Splendor motorcycle bearing No. PB-08-BK-8133 near Laddowal Toll Plaza Ludhiana.

Thereupon, the present petitioner and co-accused Rohit Kumar were arrested on 23.11.2022 and 830 grams Heroin was recovered from the purse of the petitioner during search conducted in the presence of Mr. Devinder Kumar, the then Deputy Superintendent of Police, STF Ludhiana Range.”

7. The petitioner's arguments did not point toward any material contradictions. The search was conducted in the presence of DySP, which, prima facie, would reduce the chances of false implication. As such, S. 42 would not apply initially, and recovery was not from the person, but from the purse; as such, S. 50 of NDPS Act would also not attract. Non-examination of independent witnesses is not illegal, and its outcome depends

upon the nature of evidence tendered in the examination in chief and its cross-examination.

8. Dealing in 830 grams of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	830 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	320.00%

9. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

10. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offense punishable for offenses involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offense and is not likely to commit any offense while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offense punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

11. The State’s Counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be

¹ **37. Offences to be cognizable and non-bailable.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
(a) every offence punishable under this Act shall be cognizable;
(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

achieved by putting these stringent conditions.

12. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling them to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such an offense and is not likely to commit any offense while on bail. If either of these conditions is not met, the ban on granting bail operates. The expression “reasonable grounds” means something more than *prima facie* grounds. It contemplates substantial probable causes for believing the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again.

13. The submissions made above and 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 in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. The investigation reveals sufficient *prima facie* evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

14. Per the custody certificate, the petitioner's custody is one year and ten months, which cannot be considered prolonged, and the ratio of Dheeraj Shukla does not apply.

15. The petitioner is not entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Dheeraj Shukla would be attracted when the three conditions are fulfilled,

- (a). The custody of more than two years and six months and the delay was not attributable to the accused.
- (b). The trial is at an initial stage.
- (c). The petitioner is the first offender.

16. 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. The impact of

crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

18. Petition dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

25.10.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.