

CRM-M-24228-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24228-2023
Reserved on: 22.08.2024
Pronounced on: 30.08.2024

Gurpreet Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
303	26.11.2022	STF, District STF Wing Mohali	21 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. As per custody certificate dated 18.08.2024, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	93	18.04.2017	22/61/85 of NDPS Act	STF, District STF Wing Mohali

3. Prosecution’s case is that on 26.11.2022, when the investigator along with police officials were searching of drug peddlers, then they received a secret information that Gurpreet Singh and one Vaneet Kumar who sell heroin, would be travelling through this area towards Chandigarh, to supply heroin to their customers. Based on this information, the investigator allegedly complied the conditions of NDPS Act including Section 42 of NDPS act and laid down a *naka*. Subsequently, they spotted petitioner-Gurpreet Singh along with Vaneet Kumar on an Activa. The petitioner was driving the said active and Vaneet Kumar was pillion rider. After complying with Section 50 of NDPS Act, police searched the said Active and recovered 2 kg 400 grams of heroin from boot of the said Activa. In addition to this, police had also recovered 15 grams of heroin from pocket of pants of Vaneet Kumar. Drug money of Rs.20,500/-, 20 empty pouches and one small electronic weighing machine were also recovered from boot of the said Activa.

4. Petitioner’s counsel submitted that there is a violation of mandatory provisions of NDPS Act and no independent witness was joined. 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.

5. The State’s counsel opposes such prayer on the grounds that all the mandatory provisions have been complied with.

6. An analysis of the pleadings would lead to the outcome that initially the investigator claims to have complied with Section 42 of NDPS Act because search was done from boot of the active which was being driven by the petitioner-Gurpreet Singh, as such it was not a search of person and Section 50 of NDPS Act come into operation but despite that it was also complied with. Thus, there is no prima facie compliance of any of the mandatory provisions and petitioner is not entitled to bail on this ground. Second ground for bail is non-joining of independent witnesses. Perusal of the FIR and reply is silent about the independent witnesses but simply because independent witnesses were not examined, this Court cannot draw any adverse inference against the prosecution at this stage. The reasons for which the independent witnesses were examined is subject to the cross-examination of the police officials and there is no reason to disbelieve version of official witnesses merely because there were police officials, as such petitioner is not entitled to bail on this ground also. Petitioner’s third ground for bail is delaying the trial by submitting that there are 21 witnesses. Perusal of the custody certificate dated 18.08.2024 points out that petitioner’s custody in the present case is one year and eight months which cannot be said to be prolonged considering that the heroin which was recovered, was massive and as such, petitioner is not entitled to bail on this ground of delay the trial. Another reason to deny for bail is criminal antecedents. As per para 10 of the bail petition, petitioner submits that he has no criminal antecedents, whereas, as per para 7 of the reply, petitioner had one more case, thus, the petitioner tried to mislead this Court about his criminal antecedents.

7. Dealing in 2 kg and 400 grams of heroin is a punishable offence under the NDPS Act, in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	2400 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	960.00%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii a) NDPS Act, 1985</i>	
Notification No	S.O.1055(E)
dated	10/19/2001

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Sr. No.	56
Common Name (Name of Narcotic Drug and Psychotropic 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 Psychotropic 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 mililitre of substance, if liquid, is contained in every one hundred mililitre 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.

8. 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.

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9. 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.

10. 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 achieved by putting these stringent conditions.

11. 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

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.

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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. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.

12. 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 anticipatory bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

13. 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.

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. Petition dismissed. Interim orders, if any, are recalled with immediate effect. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.