

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27287-2024
Reserved on: 03.09.2024
Pronounced on: 13.09.2024

Malkit Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner (through V.C.)

Mr. Sukhdev Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
73	14.10.2023	Rampura, District Bathinda, Punjab	22 of the NDPS Act.

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, seeking regular bail.
2. In paragraph **12** of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 14th October 2023, based on a chance recovery, the Police seized 1000 tablets containing Tramadol from the petitioner's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. 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. Petitioner's counsel referred to the following paragraphs of the bail petition:

"4. That in the present case there is total non- compliance of section 50 of NDPS Act as no offer as per law has been given by the 10/Police officials is also doubtful as the whole writing work was done by the 10 while sitting in the police station. Therefore, as per the law laid down by the Hon'ble Supreme Court in the cases of Union of India vs. Shah Alam 2010 AIR (Supreme Court) 1785, Dilip & Anr. vs. State of

Madhya Pradesh 2007(1) SCC 450 and State of Rajasthan vs. Parmanand 2014 AIR (Supreme Court) 1384 the search in the present case stands vitiated on the sole ground of the total non-compliance of Section 50 of the NDPS Act, 1985 and the petitioner is liable to be acquitted on the sole Ground of total non-compliance of Section 50 of NDPS Act in the present case FIR and the above said fact pleads towards the false implication. of the petitioner in the present case FIR.

6. *That the alleged recovery is shown to be effected from a public place and under no probability will any person check/search within his bag that too the transparent polythene bag containing intoxicating substance by keeping it open for the assess of the public at large specially the police at such a public place which is a thoroughfare. That the entire story of the prosecution is also highly unnatural and unbelievable.*

7. *That the IO/police officials fail to comply with the mandatory provisions of the NDPS Act, as provisions of section 41,42,43,50,52 and 52A have not been complied by the IO.*

8. *That in the present case all the witnesses are police personal who in absence of independent witness cannot be relied upon as they are interested in success of the case.*

9. *That the petitioner is in custody since 14.10.2023 and the trail of the case will take. Long time to conclude and no further recovery is to be effected from the petitioner as the petitioner is in judicial custody, therefore, keeping the behind the bars would serve no purpose.*

10. *That the petitioner applied for the grant of regular bail before Ld. Judge Special Court Bathinda and the same was declined and the copy of the order is annexed herewith as ANNEXURE P-2.*

11. *That the petitioner undertakes to abide by all the terms and conditions imposed by this Hon'ble Court and he will appear on each and every date before the Ld. Trial Court."*

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

"5. That it is denied that the petitioner has been falsely implicated in the FIR in question. The petitioner was in conscious possession of the contraband at the time of its recovery. False allegations have been levelled against the police. No illegality or impropriety has been committed by the police in the present case. There has been compliance of all the provisions of NDPS Act. It is denied that the petitioner was picked by the police from his house. The recovery effected falling within the ambit of commercial quantity and in view of heinous nature of crime committed by the petitioner, the petitioner is not entitled to the concession of regular bail. The case of the prosecution stands on sound footing. As such, no cause of action has accrued to the petitioner to file the present petition."

7. The petitioner's arguments did not point toward any material contradictions. It was a case of chance recovery. As such, S. 42 would not apply initially, and recovery was not from the person. As such, S. 50 would also not attract. Non-examination of independent witnesses is not an illegality, and its outcome depends upon the nature of evidence tendered in the examination in chief and its cross-examination.

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8. As per FSL report, the average weight of tablet was 335 mg and it contained Tramadol Hydrochloride.

9. Total tablets recovered from the petitioner’s possession were 1000 and its weight would be 335 grams. Dealing in 335 grams of Tramadol is a punishable offense under the NDPS Act in the following terms:

Substance Name	Tramadol
Quantity detained	335 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	134.00%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1762(E)
dated	4/26/2018
Sr. No.	238 ZH
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	5 Gram
Commercial Quantity	250 Gram

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Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1761(E) & S.O. 3448(E)
dated	26-Apr-2018 & 26-Jul-2018
Sr. No.	110Y
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

10. 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.

11. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that

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

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.

12. 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.

13. 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.

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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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.

14. 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.

15. The petitioner's custody is around eleven months, which, at this stage, cannot be said to be excessive considering the quantity involved.

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

(ANOOP CHITKARA)
JUDGE

13.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.