

CRM-M-32891-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32891-2024
Reserved on: 09.09.2024
Pronounced on: 27.09.2024

Jaspal Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jasvir Singh Dhaliwal, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
368	19.10.2021	Dabwali Sadar, District Sirsa, Haryana	15 of NDPS Act No.61 of 1985

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 03.09.2024, accused has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On Oct 19, 2021, based on a chance recovery, the Police seized 100 kg of poppy husk from the back seat of a car in which the petitioner, along with the driver and another person, was sitting in the front seats. 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 argued that nothing is recovered from possession of the petitioner, rather the recovery is planted falsely and the petitioner is absolutely innocent person and his name is figured in the FIR falsely by the police. It is submitted that no offence is made out against the petitioner in any manner and rather the FIR is result of grudge of the Police with the petitioner. The story put-forth by the prosecution is highly improbable and the same is not convincing and believable in the normal course of nature.

Counsel further submitted that in the present case, allegations against the petitioner are vague and not convincing in the normal course of nature. The story put forth by the police party is not believable rather it is full of improbabilities and is not believable one to the minds of the prudent person and is just fabricated to defame and humiliate the petitioner in the eyes of society. It is also submitted that petitioner is in custody since 19.10.2021 and investigation of the case has been completed and challan has also presented before the Ld. Trial Court, therefore, petitioner is no more required by the police for investigation or interrogation. It is submitted that the prosecution was not able to prove the search and recovery of the contraband made from the petitioner in accordance with the procedure prescribed under Section 50 of the NDPS Act. Since the non-compliance of the mandatory procedure prescribed under Section 50 of the NDPS Act is fatal to the prosecution case and in this case prosecution has failed to prove the compliance as required in law, therefore petitioner is entitled to claim the benefit to seek his acquittal.

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

"That after completion investigation challan/final report under section 173 Cr.P.C was submitted in the Ld. Trial Court, against petitioner/accused Jaspal Singh and accused Rajesh Kumar and Gurpreet Singh @ Preet under section 15 NDPS Act on 12.04.2022. The Ld. Trial Court has framed charge under section 15 (c) NDPS Act, against petitioner/accused Jaspal Singh and accused Rajesh Kumar and Gurpreet Singh @ Preet, vide charge sheet dated 20.01.2023. Out of total 15 prosecution witnesses, 6 prosecution witnesses have been examined. Now the case is pending in the Ld. Trial Court for 18.09.2024 for prosecution evidence. The trial of the case is likely to be concluded near future. Copy of custody certificate of petitioner/accused is annexed herewith as Annexure R-3."

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.

8. An apparent inference can be drawn from the FSL report that the sample contained constituents of poppy straw.

9. Dealing in 100 kg of poppy straw is a punishable offense under the NDPS Act in

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the following terms:

Substance Name	Poppy straw
Quantity detained	100 Kg
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	200.00%

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.	110
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Poppy straw
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	1000 Gram (i.e. equivalent to 1 Kg)
Commercial Quantity	50000 Gram (i.e. equivalent to 50 Kg)

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.15 & S.2(xviii) NDPS Act, S.O.821(E)
dated	11/14/1985
Sr. No.	S.2(xviii)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom; S. 2(viib)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances; S.2 (xvii) “opium poppy” means— (a) the plant of the species Papaver somniferum L; and (b) the plant of any other species of Papaver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by

	notification in the Official Gazette, declare to be opium poppy for the purposes of this Act; S2. (xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;
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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 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

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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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. 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. 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.

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

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

(ANOOP CHITKARA)
JUDGE

27.09.2024

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Whether speaking/reasoned: Yes

Whether reportable: No.