

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34227-2024
Reserved on: 16.10.2024
Pronounced on: 24.10.2024

Navdeep Rai ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Subhash Kumar, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
116	06.10.2023	Nakodar City, District Jalandhar City	22 of the 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. In paragraph 8 of the bail petition, the accused declares that he has no criminal antecedents, but as per paragraph 11 of the status report filed by the State, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	20	17.02.2007	307/326/323/324 IPC	Goraya, Jalandhar
2	133	26.09.2009	382/34/323 IPC	Nurmehal

3. The facts and allegations are taken from the reply filed by the State. On October 06, 2023, based on prior information, the Police seized 150 tablets containing Etizolam 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 refers to bail petition and specifically to paras 4 & 5, which read as follows:

“4. That as a matter of fact the petitioner was arrested on

06.10.2023 and remained in custody for a period of 1 month 24 days and he was released on bail u/s 439 Cr.P.C. The petitioner applied his regular bail before Ld. Trial Court and it was allowed in the light of judgment of Inderjit Singh Laddi with the condition that till the receipt of chemical examiner he released on regular bail. Thereafter the petitioner was regularly appearing before Ld. Trial Court on each and every date of hearing. The copy of the order dated 30.11.2023 vide which the petitioner has granted regular bail u/s 439 Cr.P.C is annexed herewith as Annexure P-2.

5. That as per report the alleged recovery from petitioner was 150 intoxicant tablets found containing Etizolam. The weight of each tablet was 99 mg, so total quantity of the contraband comes to 14.85, which falls in the category of commercial quantity. Therefore keeping into consideration the quantity of Etizolam the interim bail granted to the petitioner is cancelled and he is taken back in custody. Challan filed and charges already framed."

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 10 of the status report, which reads as follows:

"10. That in compliance of the above-said order dated 24.07.2024 passed by this Hon'ble Court, the response to the specific 03 queries put in by this Hon'ble Court are as follows:-

*A) **THE ROLE OF THE PETITIONER:-** The petitioner was apprehended by the Police on 06.10.2023 and 150 intoxicant tablets were recovered from his possession and as per the FSL Report, salt "Etizolam" was found present in the said tablets.*

*B) **THE EVIDENCE AGAINST THE PETITIONER:-** The recovery of 150 loose intoxicant tablets from the petitioner clearly shows that he was indulged in the drug trafficking."*

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 illegal, and its outcome depends upon the nature of evidence tendered in the examination in chief and its cross-examination.

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.

9. 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;

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 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

(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.

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.

12. 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.

13. Per the custody certificate dated 15.10.2024, the petitioner's custody is 7 months and 24 days, which cannot be considered prolonged, and the ratio of Dheeraj Shukla does not apply.

14. 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.

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. The impact of crime would also not justify 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

24.10.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.