

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51767-2024
Reserved on: 06.11.2024
Pronounced on: 19.11.2024

Mohd. Imtiyaz @ Mohamad Imtiyaz ...Petitioner

Versus

Union Territory, Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vivek Kathuria, Advocate and
Mr. Rajat Verma, Advocate
for the petitioner.

Mr. Manish Bansal, PP, UT Chandigarh with
Mr. Navjit Singh, Advocate
for the respondent-UT.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
476	25.12.2023	Sector-36, Chandigarh	21, 22 & 29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 10 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 Dec 25, 2023, based on a chance recovery, the Police seized 54.13 grams of Amphetamine 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 para 7, which reads as follows:

“That the co-accused of the petitioner namely Sukhpreet Singh and Gagan, who preferred CRM-M-24344-2024 and CRM-M-34956-2024 respectively, were granted concession of regular bail by this Hon'ble Court vide orders dated 27.05.2024 and 27.09.2024 respectively. True downloaded copies of the orders dated 27.05.2024 and 27.09.2024 are attached herewith as Annexure P-3 and Annexure P-4 respectively.”

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 8 of the reply, which reads as follows:

“Role of the petitioner

That the present case involves the recovery of commercial quantity of Amphetamine (Ice), amounting to 54.13 grams, from the possession of the present petitioner, indicating his significant role in drug trafficking activities. The petitioner has been identified as an active participant in a larger network of narcotic distribution, directly engaged in the sale and supply of contraband substances. Additionally, the investigation has uncovered financial transactions amounting to 2,16,000 transferred by the petitioner to co-accused Gagan, further linking him to the procurement and circulation of drugs. His actions pose a substantial threat to public safety, reinforcing his involvement in an organized illicit drug trade.”

7. Petitioner’s case is not on parity with co-accused Sukhpreet Singh and Gagan, who were granted bail by this Court because their name was cropped up in disclosure statement. 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. Dealing in 54.13 grams of Amfetamine is a punishable offense under the NDPS Act in the following terms:

Substance Name	AMFETAMINE
Quantity detained	54.13 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	108.26%

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.	152
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	AMFETAMINE
Other non-proprietary name	amphetamine
Chemical Name	(±)-alpha-methylphenethylamine

Small Quantity	2 Gram
Commercial Quantity	50 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	NDPS Act, 1985 (61 of 1985), S.O. 821(E)
dated	11/14/1985
Sr. No.	16
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	AMPHETAMINE
Other non-proprietary name	*****
Chemical Name	(±)-2-Amino-1-phenylpropane

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,

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.

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.

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. As per the custody certificate dated 06.11.2024, the petitioner's custody is 10 months & 09 days, which cannot be considered prolonged.

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

19.11.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.