

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28656-2024
Reserved on: 06.11.2024
Pronounced on: 20.11.2024

Arshad Saifi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Dahiya, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
122	23.09.2021	Khamanon, Distt. Fatehgarh Sahib	22 and 29 of 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 9 of the bail application and as per para 7 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	150	20.09.2021	22, 29 of NDPS Act	Amloh, Distt. Fatehgarh Sahib

3. The facts and allegations are taken from the status report filed by the State. On Sep 23, 2021, based on a chance recovery, the Police seized 65000 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 his family.

5. The State's counsel opposes bail and refers to the status report.

6. It would be appropriate to refer to para 3 to 5 of the status report filed to the bail petition, which reads as follows:

“3. That in compliance with the above noted order of this Hon'ble Court, it is respectfully submitted that on 23.09.2021, SI Gurmit Singh along with other police officials was present near Water Tank, Village Sanghol in connection with checking of suspected persons. In the meantime one Swift Car No.UP-19F-2331 came from the side of G.T. Road which was stopped by the police party. The present petitioner was in the said car and it was suspected that some intoxicant substance was there in the car. On this, the said SI Informed the nearby Police Post to send some other Investigating Officer as per guidelines of Hon'ble Supreme Court so as to check the car. Accordingly SI Suresh Kumar, Incharge, P.P.Sanghol reached at the spot and information as envisaged u/s 42 of NDPS Act was sent to the senior officers. In compliance with section 50 of NDPS Act, the petitioner was given an offer by the said SI for getting the search of his car done from some gazetted officer or magistrate on which the petitioner opted to get the search conducted from some gazetted officer. Accordingly, Sh. Jaspinder Singh, PPS, the then DSP-Khamano was requested by the said SI to come at the spot, who reached there and he also gave an offer to the petitioner in compliance of section 50 of NDPS Act for getting the search conducted from some other gazetted officer or magistrate wherein the petitioner reposed his faith in the said DSP.

Accordingly search of the said car was conducted by the said SI in the presence of the said DSP during which one Plastic Bag was found from the Dicky of the car which was containing 130 Cardboard Boxes and when those boxes were checked, then 10 Strips of 50 Tablets from each box i.e. each box containing tables; 500 total 65,000 Tablets of Tramadol Hydrochloride were recovered. Apart from it, Drug Money of Rs.4.00 Lac was also recovered from an Envelope in the same plastic bag.

Accordingly the petitioner was arrested on 23.09.2021 and during his examination, the petitioner disclosed that one Vanit Kumar had given him two bags of intoxicant drugs out of which one bag was sold by the petitioner to one person at Ambala-Kalka Road for Rs.4.00 Lac and had kept that Drug Money of Rs.4.00 Lac in the above said bag which was recovered from the petitioner by the police as mentioned above. The said Vaneet Kumar was also nominated as accused. An involvement of Mohamad Amjad and Nabeel Zafar was also found in the commission of the crime and offence u/s 29 of NDPS Act was added.

4. That the said Vanit Kumar was arrested on 28.09.2021 when he was going on a motorcycle No.UP-12AW-9671 and one bag was kept by him on

the Fuel Tank of the motorcycle and when the said bag was checked, then 10 boxes each containing 10 Strips of 50 total tablets; 5000 tables of Tramadol Hydrochloride were recovered.

5. That thereafter, the petitioner was granted conditional bail by the Ld. trial court vide order dated 07.02.2022 (Annexure P-4) with the condition that in case a report of the FSL comes against the petitioner, then he will surrender himself. However, in the FSL Reports (Annexures P-3 and P-5), it was mentioned that chemical Chlorpheniramine Maleate was found in the contents. Thereafter, with the permission of the Ld. trial court, re-testing of the samples was got done from CFSL as held by Hon'ble Supreme Court in Criminal Appeal No.1640 of 2010 titled as Thana Singh V/s Central Bureau of Narcotics and the CFSL vide its report No. CFSL (C) 204/22/Chem/43/22/717 dated 22.03.2022 mentioned that chemical "Tramadol" has been detected in the contents. It was further mentioned by the CFSL that the weight of 1000 sample tablets was 399 grams and in this way the total weight of 70,000 tablets (65,000 + 5,000) comes to 27.930 kgs. Thus the quantity comes within the purview of commercial quantity."

7. 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.

8. However, the petitioner is entitled to bail because Hon'ble Supreme Court had granted bail on prolonged custody in the following judicial precedents:

- 1) In Junaid Alam v. State of Uttarakhand, decided on 12 Aug 2024, SLP(Crl.) 7708-2024, Hon'ble Supreme Court holds,

[2]. It is pointed out that the petitioner has been in custody for last more than 18 months since he was arrested on 25.01.2023. It is then submitted that only 3 out of the 10 cited prosecution witnesses have been examined and they have not said anything to connect the petitioner with the crime.

[3]. The learned counsel for the State would submit that the concerned Contraband are medicinal drugs but they are sold for profit. Moreover, it is of commercial quantity.

[4]. We have perused the nature of the Contraband i.e., the prohibited medicines (SYP Codectus 100 Bottles (100 ML each), Cap Pyeevon Spas Plus 720 Cap Parvion Spas 800 Capsules, Spasonof NF 960 capsules, Capsules Spasmoproxyvon Plus 144, Proxywell Spas 2568 Capsules, Alprasafe Table 600 Tablets, Pyeevon Spas Plus 32 Capsules).

[5]. Having considered the above and the fact that the trial is unlikely to conclude on a near date, we are of the view that the petitioner – Junaid Alam deserves to be granted bail. It is ordered accordingly. Appropriate bail conditions be imposed by the trial court.

9. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

10. Given this, the criminal antecedents are also not legal grounds for denying the rigors of S. 37 of the NDPS Act at this stage.

11. In Tajmul SK v. The State of West Bengal, decided on 23 Jul 2024, CrA 3047-2024, Hon'ble Supreme Court holds,

[5]. We are inclined to set aside the impugned order only on the premise that right to speedy trial is a fundamental right. Despite the fact that the appellant has been under incarceration for more than one and a half years, the trial is yet to start, though, it is submitted by learned counsel appearing for the State that charges have been framed. Suffice it is to state that trial would take considerable length of time. There is no antecedent involving the appellant.

[6]. Accordingly, the impugned order is set aside and the appellant is granted bail, subject to the conditions that may be imposed by the Trial Court.

12. As per custody certificate dated 05.11.2024, the petitioner's custody in this FIR is of around two years and nine months. Given the drugs were medicines that attracted violation of S. 22 of NDPS Act, viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability of further pre-trial incarceration at this stage.

13. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

14. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

15. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

16. This order is subject to the petitioner’s complying with the following terms.

17. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

18. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

19. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon’ble Supreme Court holds that “The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must

also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”

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

21. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

22. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

20.11.2024
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.