

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45339-2024
Reserved on: 07.11.2024
Pronounced on: 20.11.2024

Banti @ Laddu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ruhani Chadha, Advocate,
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
198	28.08.2022	City Kapurthala, Distt. Kapurthala	21 (C) of 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 12 of the bail petition, the accused declares no criminal antecedents. The status report and the custody certificate do not contradict it.
3. The facts and allegations are taken from the status report filed by the State. On Aug 28, 2022, based on chance recovery, the Police seized 260 grams of heroin from the bag thrown by petitioner. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. The petitioner seeks bail on parity and pre-trial custody of more than two years and six months. 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 status reply.
6. Dealing in 260 grams of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin
Quantity detained	260 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	104.00%

Specified as small & Commercial in S.2(viia) & 2(xxiia) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	56
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin
Other non-proprietary name	*****
Chemical Name	Diacetylmorphine
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	11/14/1985
Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

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 the Hon'ble Supreme Court had granted bail on prolonged custody in the following judicial precedents:

- 1) In *Dheeraj Kumar Shukla v. The State of Uttar Pradesh*, decided on 25 Jan 2023, SLP (Crl) 6690-2022, Hon'ble Supreme Court holds,

[1]. The petitioner seeks enlargement on regular bail in FIR No.325/2020, dated 23.06.2020, under Sections 8 and 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') registered at Police Station Jhunsi, District Pryagraj, Uttar Pradesh.

[2]. The allegations are that on a secret information, the police authorities intercepted two vehicles on 23.06.2020 i.e. one 'Gray' coloured 'Honda City' Car and the second 'White' coloured 'Swift Dzire' Car. On an interrogation at the spot, Praveen Maurya @ Puneet Maurya, Rishab Kumar Maurya and Dheeraj Kumar Shukla were found to be occupants of the 'Honda City' Car whereas the petitioner was driving the 'Swift Dzire' Car. On taking a search, more than 92 kgs. Ganja was allegedly recovered from 'Honda City' Car whereas more than 65 kgs. Ganja was recovered from 'Swift Dzire' Car. The accused were arrested at the spot. The petitioner is, thus, in custody since 24.06.2020.

[3]. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.

[4]. For the reasons stated above but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.

- 2) In *Shince Babu v. The State of Kerala*, decided on 21 Feb 2024, MANU/SCOR/27340/2024, Hon'ble Supreme Court holds,

[2]. The prosecution case is that Accused No.1 (Liju) was found travelling in a private bus from Cherthala to Arookutty and contraband MDMA, weighing 138.750gms, was recovered from his conscious possession. The said contraband was procured by Accused No.1 with the help of Accused No.2 from Bangalore. The petitioner is nominated as Accused No.4 in the crime. He was

arrested on 11.04.2022. The petitioner was granted bail by the Trial Court on 20.09.2022 but on a petition filed by the State of Kerala, challenging the bail order, the High Court cancelled the petitioner's bail on 13.06.2023. However, liberty was granted to the petitioner to apply afresh before the Sessions Court. The petitioner again applied for bail but his prayer was declined by the Trial Court on 07.07.2023. The petitioner approached the High Court but his first bail application was dismissed on 14.08.2023. His second bail application was turned down by the High Court on 09.10.2023. Meanwhile, Accused No.2 was granted bail by the High Court on 11.10.2023. Seeking parity with the co-accused, the petitioner moved third bail application, which has been rejected by the High Court vide the impugned order dated 09.11.2023.

[3]. We have heard learned counsel for the parties and carefully perused the material placed on record.

[4]. It may be seen from para 6 of the impugned order that the High Court, while declining bail to the petitioner, was largely influenced by the fact that a huge quantity of contraband, which falls in the category of 'commercial', was recovered and as such, the rigors of Section 37 of the NDPS Act are attracted. On a specific query, it is not disputed by learned State counsel that no contraband was recovered from the conscious possession of the petitioner. In such circumstances, it is difficult for us to apply the twin test of Section 37 of the NDPS Act while considering the petitioner's prayer for bail.

[5]. Be that as it may, the petitioner is in custody since 11.04.2022 except for the period from 20.09.2022 to 27.06.2023 when he remained on bail pursuant to the order passed by the Trial Court/Sessions Court.

[6]. It seems that the investigation is complete and the conclusion of trial will take some reasonable time. The petitioner's co-accused are already on regular bail/default bail. As per the record, there are no criminal antecedents of the petitioner.

[7]. Taking into consideration all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail to the petitioner.

[8]. The petitioner is, accordingly, directed to be enlarged on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.

[9]. The petitioner shall remain present before the Trial Court on each and every date of hearing, failing which it shall be taken as a misuse of concession of bail granted to him today by this Court.

3) In *Sohrab Khan v. The State of Madhya Pradesh*, decided on 13 Aug 2024, SLP (Crl.) 7115-2024, Hon'ble Supreme Court holds,

The petitioner is an accused for the alleged offences punishable under Sections 8/22 and 29 of the Narcotic Drugs and Psychotropic Substances Act. His bail application was dismissed by

the High Court. He has already undergone about one year and four months in jail. The petitioner and coaccused were found in possession of 80 grams of MD powder each of which commercial quantity is 50 grams.

Considering the fact that the petitioner has no criminal antecedents and the entire facts and circumstances of this case, we are of the opinion that a case of bail is made out for the petitioner and therefore, the prayer of the petitioner is allowed.

Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court.

- 4) In *Ramlal v. The State of Rajasthan*, decided on 17 Sep 2024, SLP (Crl) 9510-2024, wherein Hon'ble Supreme Court granted bail to a first offender after one year and six months of custody who was possessing 450 grams of smack (Heroin), and the holds as follows:

The petitioner and the other accused persons are accused for the offences punishable under Sections 8/21 & 8/29 of the Narcotic Drugs and Psychotropic Substances Act and allegation is that 450 gram of smack has been recovered from them. The bail application of the petitioner was dismissed by the High Court. Hence, he approached this Court. He has already undergone about 1 year and 6 months in jail.

Heard learned counsel for the petitioner. As per office report dated 13.09.2024, the service is deemed complete on the sole respondent-State but no one has appeared for the State.

Considering the period of incarceration of the petitioner and the fact that the petitioner has no criminal antecedents, we are of the opinion that a case of bail is made out for the petitioner.

- 5) In *Sabat Mehtab Khan v. The State of Maharashtra*, decided on 03 Sep 2024, SLP (Crl) 8557-2024, Hon'ble Supreme Court holds,

The petitioner is an accused for the offences punishable under Sections 21(c) and 29 of the of the Narcotic Drugs and Psychotropic Substances Act and allegation is that 275 gms. and 50.01 gms of heroine has been recovered from him. His regular bail application was dismissed by the High Court. He has already undergone about 1 year six months in jail.

Heard learned senior counsel/counsel for the parties.

Considering the quantity of the contraband articles and the period of his incarceration, we are of the opinion that a case of bail is made out for the petitioner.

9. As per the custody certificate dated 06.11.2024, the petitioner is in custody for 1 year, 10 months, and 8 days in this FIR.

10. 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.

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. Given the above, the petitioner's pretrial custody is more than some of the judicial precedents mentioned above, and since the petitioner is also a first offender, she shall have a right of bail under Article 14 of the Constitution of India.

13. Considering the quantity involved and the pre-trial custody, Section 37 of the NDPS Act would not be attracted. Given this, the criminal antecedents are also not a legal ground for denying the rigors of S. 37 of the NDPS Act at this stage.

14. Given the penal provisions invoked 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.

15. 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.

16. 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 Ilaka 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.

17. 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)	

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

19. 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.

20. 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.

21. 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.”

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

23. 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.

24. **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.