

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56069-2024
Reserved on: 02.12.2024
Pronounced on: 17.12.2024

Krishna Saw ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Akshay Kumar Dahiya, Advocate and
Mr. Deepak Dahiya, Advocate,
for the petitioner.

Mr. Rajat Gautam, Addl. A.G. Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
44	30.01.2024	Shamalkha, Distt. Panipat	18, 27 and 29 of the 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 10 of the bail petition, the accused declares that he has no criminal antecedents. However, as per the status report/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Year	Offenses	Police Station
1.	50	2015	302, 24 IPC	Bashisth Nagar, Chatra, Jharkhand
2.	39	2010	147, 148, 149, 452, 354, 379 IPC and 3/4 SC/ST Act	Bashisth Nagar, Chatra, Jharkhand

3. The facts and allegations are taken from the status report filed by the State. On Jan 30, 2024, based on secret information, the Police seized 5 kgs and 140 grams of opium from the possession of the main accused, Surrender Prashad Verma. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. During the custodial interrogation of the accused, Surender Prashad, he disclosed that the petitioner, Krishna Saw, and another person named Deepak were the sellers and suppliers of the drugs. Based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.
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 his family.
6. The State's counsel opposes bail and refers to the status report.
7. It shall be appropriate to refer to para 2(iv) of the status report, which reads as follows:

“2 (iv) That on 02/02/2024 case property parcels were deposited with FSL Madhuban vide RC No. 13 dated 02.02.2024 for examination. FSL report has been received in this case with the opinion that sample was identified as opium containing 5.6% (w/w) Morphine. FSL report is annexed as R-3.”

8. Dealing in 5.140 kg of opium is a punishable offense under the NDPS Act in the following terms:

Substance Name	"Opium"
Quantity detained	5.14 Kg
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	205.60%

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.	92
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Opium
Other non-proprietary name	*****
Chemical Name	And any preparation containing opium
Small Quantity	25 Gram (i.e. equivalent to 0.025 Kg)
Commercial Quantity	2500 Gram (i.e. equivalent to 2.5 Kg)

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.18 & S.2(xv) NDPS Act, S.O.821(E)
Dated	11/14/1985
Sr. No.	S.2(xv)

Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(xv) “opium” means— (a) the coagulated juice of the opium poppy; and (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent. of morphine; 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; 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.

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. In Abida v. State of Haryana, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. 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 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 offence, and is not likely to commit any offence while on bail. If either of these two 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 that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[31]. 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 subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

11. It would be appropriate to refer to the evidence collected against the petition, which is taken from the reply, which reads as follows:

"2. (v) That on 05/02/2024, the petitioner was arrested by IO/ASI Randeep No. 158 and on interrogation he suffered a disclosure statement admitting therein the manner in which he remain involved in the crime and in pursuance thereof he has got effected the recovery of Rs.5,600/- gained by him by selling recovered narcotic substance Accordingly, Section 29 of NDPS Act was added in the present case as per the nature of crime.

vi. That the role of the petitioner in the crime is that the petitioner is involved in the work of sale of opium as the opium is available on cheap rate in his residential area The petitioner know co-accused Surender Prasad Verma and he used to buy opium from the petitioner at the rate of Rs. 70,000/- per KG Some days ago, co-accused Surender Prasad Verma has purchased 2 KG opium in Rs. 1,40,000/- by paying Rs. 25,000/- cash to the petitioner and remaining amount had to be paid by co-accused Surender Prasad Sharma by selling opium and the petitioner used to meet to him at Bijnore UP. His disclosure statement is annexed R-4."

12. Thus, the evidence collected so far consists of disclosure statements without any discovery of fact.

13. In Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

14. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband. No other evidence is collected at this stage to connect the petitioner with the main accused. Thus, there is no justification to deny bail. Consequently, the petitioner has satisfied the first rider of section 37 of the NDPS Act. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

15. For now, the petitioner has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

16. As per paragraph 7 of the bail petition, the petitioner has been in custody since 06.02.2024. As per the custody certificate dated 29.11.2024, the petitioner’s total custody in this FIR is ten months. 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 further pre-trial incarceration at this stage.

17. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

18. 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.

19. 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.

20. 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)	

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

22. 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.

23. 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.

24. 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.”

25. In Md. Tajiur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon’ble Supreme Court holds in Para 7, “It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences.”

26. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

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

28. 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.

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

(ANOOP CHITKARA)
JUDGE

17.12.2024
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.