

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56281-2024
Reserved on: 12.12.2024
Pronounced on: 19.12.2024

Jagir @ Jangir ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Sekhon, Advocate,
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
465	23.08.2024	Bhiwani Sadar, Distt. Bhiwani	20 (B) (II) (C) and 29 of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 15 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the status report filed by the State, which reads as follows:

“2. That brief facts of the case are that on 23.08.2024 SI Rajesh Kumar alongwith other police officials was present at bus stand Mundhal on Rohtak-Hisar highway for crime prevention, at that time they received a secret information that a pickup vehicle no.HR-67D-6785 and dezire car no. HR- 51BP-5796 are parked near highway king dhaba and 8-10 persons are in those vehicle. Those persons are talking about Ganja in huge quantity in that pickup vehicle. There can be ganja in those two vehicles and if raid is conducted they can be apprehended with ganja patti. Notice under section 42 NDPS was prepared and sent through CT Rakesh 1004 for information to higher officers and for registration of rapat in police station

Sadar Bhiwani. When SI Rajesh Kumar reached at highway king dhaba alongwith other police officials, then 5-6 persons fled away from spot by taking benefit of dense dark from those two vehicles. SI Rajesh Kumar apprehended a person who was seating on driver seat of pickup vehicle and HC Bijender Singh apprehended that person who was seating on side seat of driver seat. HC Narender Kumar apprehended that person who was standing in back body of pickup vehicle. ASI Sunil Kumar apprehended that person who was seating on conductor seat of deziere vehicle. That person who was apprehended by SI Rajesh Kumar disclosed his name Sandeep Kumar @ Sonu son of Prem Singh resident of Dhani Raipur, District Hisar, that person who was apprehended by HC Bijender Singh disclosed his name Anirudh son of Ombir, that person who was apprehended by HC Narender Kumar disclosed his name Sumit son of Pawan Kumar and that person who was apprehended by ASI Sunil Kumar disclosed his name Sonu son of Billu, then notice under section 50 of NDPS act served upon them for their personal search and search of those two vehicles by gazetted officer. Naresh Kumar AEE/SDO TL HVPNL BHIWANI was contacted and he assured that he will arrive at the spot. ASI Sunil Kumar was directed to make the video. Sarpanch Harbir @Harshu son of Sher Singh resident of Mundhal Khurd was requested to join the investigation and as per request he joined the investigation. At about 3:15 AM above mentioned gazetted officer came at the spot and personal search of apprehended accused persons was conducted, nothing was recovered from their personal search, then search of pickup vehicle no. HR-67D-6785 was conducted and during search, bags of clothes, plastic carats, plastic bags and toys of children were found in pickup vehicle. The 121 packets of plastic were found in plastic carats, bags and bag of cloths and those plastic packets were cut with the help of knife and ganja patti was recovered from those plastic packets. During search three mobile phones were recovered from a bag which was kept in pickup vehicle, mobile phone marka VIVO of sky blue color belongs to accused Sandeep, mobile phone marka I phone of white color is belongs to accused Sonu and mobile phone marka Realme of blue colour is belongs to accused Sumit. One more phone of black color was recovered from cloth bag which was broken from rear side. All four phones were taken in possession vide memo. When measurement done of recovered contraband then weight of said contraband was found 442 Kg 890 Grams. All four accused persons could not produce any license or permit. The pickup vehicle number HR-

67D-6785 was taken in possession. After this search of swift desire vehicle no. HR-51BP-5796 was conducted and nothing was recovered from this vehicle. All apprehended accused persons disclosed at the spot that they procured recovered contraband from Ramesh son Hukam, present petitioner, Dharmbir son of Nagraj and from their friends from Sampla area. Ramesh was seating with them in pickup vehicle and Jangir was seating in swift vehicle alongwith his friends. They were in contact with each other through mobile phones. The present petitioner informed about police barricading near Munahal and because of this information they stayed there at highway king dhaba. The swift vehicle was taken in possession vide memo. Copy of FIR is already annexed as Annexure P-1."

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 the following portions of the status report, which read as follows:

"14. That during investigation on 07.10.2024, call details and CAF ID of mobile numbers 72065xxxxx of accused Sumit, 98125xxxxx of accused Sandeep, 98021xxxxx, 81685xxxxx of accused Shekhar and 8708xxxxx of accused Sonu were received.

18. That during investigation 25.10.2024, call details and CAF ID alongwith certificate under 63(4)C of BSA was received of mobile number 94164xxxx of accused Anirudh. On same day a letter was sent to office of Superintendent of Police, Bhiwani for providing call detail, tower location and CAF ID of mobile number 89305xxxxx of accused Ramesh from 15.09.2024 till that day.

21. That during investigation on 15.11.2024, observation memo of call details of accused persons and the present petitioner was prepared. According to call details mobile number 99960xxxxx is in name of present petitioner. Mobile number 87089xxxxx is in name of accused Sonu. On 21.08.2024, the present petitioner and accused Sonu contacted each other 23 times and on 22.08.2024 they contacted each other 10 times. On 22.08.2024 location of mobile number of the present petitioner and accused Sonu was at Rohtak from 6 AM to 7 AM and location of their

mobile numbers was at Sampla from 9:31 PM to 9:50 PM, at that time they were talking with each other through mobile phones. On 22.08.2024, location of mobile number of the present petitioner and accused Sonu was at Mundhal from 11:12 pm to 11:13 pm. The place of occurrence is also situated at Mundhal. Mobile number 70822xxxx is in name of accused Dharambir. According to record, on 21.08.2024 present petitioner and accused Dharambir contacted each other 26 times and on 22.08.2024 present petitioner and accused Dharambir contacted each other 9 times. On 22.08.2024, location of mobile number of the present petitioner and accused Dharambir was at Sector-6, Rohtak in morning and at Sampla from 7:31 pm to 9:35 pm, at that time they were talking with each other on phone. Mobile number 70169xxxxx is in name of accused Ramesh. On 21.08.2024 present petitioner and accused Ramesh contacted each other 21 times and on 22.08.2024 present petitioner and accused Ramesh contracted each other 12 times. On 22.08.2024 location of mobile numbers of the present petitioner and accused Ramesh was at Rohtak in morning, at Sampla from 9:17 pm to 9:56 pm and at 11:05 pm at Singhwa Khas near Mundhal. Place of occurrence is also situated in Mundhal.”

7. The weight of the ganja recovered from the vehicle, where the petitioner was found present and in conversation with the other accused, was 442 kg and 890 grams.
8. During investigation on 20.09.2024, report from RFSL Sunaria, Rohtak has been received and ganja was detected after examination of samples.
9. Report is annexed herewith as Annexure R-2.
10. Dealing in 442.890 kgs of ganja is a punishable offence under the NDPS Act in the following terms:

Substance Name	Ganja/ Bhang Patti
Quantity detained	442.89 Kg
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	2214.45%

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.	55

Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Ganja
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	1000 Gram (i.e. equivalent to 1 Kg)
Commercial Quantity	20000 Gram (i.e. equivalent to 20 Kg)

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	2(iii)(b) NDPS Act, 1985, S.O.821(E)
dated	11/14/1985
Sr. No.	2(iii)(b)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(iii)(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; S. 2(viib)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

11. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act and the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

12. Given the above, the petitioner has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

13. 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.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

(a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [Narcotics Control Bureau v Kishan Lal, 1991 (1) SCC 705, Para 6].

(b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [Customs, New Delhi v. AhmadalievaNodira, (2004) 3 SCC 549, Para 7].

(c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [Union of India v. Niyazuddin SK &Anr, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].

(e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [N.R. Mon v. Md. Nasimuddin, (2008) 6 SCC 721, Para 9].

(f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[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.

14. There is sufficient digital evidence indicating the petitioner’s presence with the co-accused near the vehicle from which the massive quantity of ganja was recovered.
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, are disposed of.

(ANOOP CHITKARA)
JUDGE

19.12.2024
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.