

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48713-2024
Reserved on: 15.02.2025
Pronounced on: 28.02.2025

Kamaljit Singh Gill @ Kamaljit Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Harjot Goyal, Advocate for
Mr. Monty Goyal, Advocate,
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
45	08.06.2022	Sadar Raikot, Distt. Ludhiana	18, 25, 29, 61 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. Vide order dated 27.09.2024, the petitioner was granted interim bail/ protection, which continues to date.
3. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
4. The facts and allegations are taken from the status report filed by the State. On 08.06.2022, based on secret information, the Police seized 1 kg 250 gams opium from the possession of co-accused Gurtej Singh @ Teji. The co-accused in his disclosure statement disclosed that he purchased 250 grams opium from the petitioner on 08.06.2022 The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
5. The petitioner's counsel argued that the petitioner has been nominated in the present case on the basis of disclosure statement of co-accused Gurtej Singh @ Teji. He submits that the co-accused Gurtej Singh @ Teji and Ranjit Kaur @ Rani have already been released on regular bail by the trial Court, vide Annexures P-2 and P-3. He further

submits that another co-accused Karnail Singh @ Babbu, who was also nominated on the basis of disclosure statement, has also been granted concession of anticipatory bail by the trial Court vide Annexure P-4.

6. The petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner's counsel argued that the custodial investigation would serve no purpose whatsoever and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

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

8. It would be appropriate to refer to the following portions of the status report, which read as follows:

"15. That the role of the petitioner in this case is that he used to purchase opium and poppy husk along with accused Gurtej Singh @ Teji from Jharkhand and Madhya Pradesh States and sell the same in Punjab. He also purchased 250 grams opium from accused Gurtej Singh @ Teji.

16. That the petitioner is involved in smuggling activities of selling opium and poppy husk to the people after purchasing the same from other states. Enquiries are to be made from him about the names and addresses of the persons who sold opium and poppy husk to the petitioner and also the name of persons to whom he used to sell these intoxicant materials. Enquiries are also made from him what property he has obtained or purchased with the help of drug money. The petitioner does not deserve the concession of anticipatory bail. Custodial interrogation of the petitioner is required to the Investigating Officer."

REASONING:

9. An analysis of the above would lead to the following outcome.

10. The quantity involved is 1 kg 250 grams opium, which is prima facie non-commercial.

11. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

12. The petitioner was granted interim protection and he was named on the basis of disclosure statement. The co-accused has already been granted the benefit of bail. During the interregnum, there is no allegation that he had intimidated the witnesses, hampered the investigation, or did not join the trial.

13. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing the same for the bail stage.

14. 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.

15. Given the above, there would be no justification to discontinue the interim protection, which is made absolute subject to the petitioner complying with the terms of the bail order and the following additional conditions.

16. The petitioner is directed to join the investigation as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

17. Given the background of allegations against the petitioner, it becomes paramount to protect the witnesses, and members of society, detection staff 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 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, 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.

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

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. The concerned trial court is authorized to delete, modify, or relax any of the above conditions and shall be competent to do so in accordance with the law.

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

22. **Petition allowed** in terms mentioned above. Interim order dated 27.09.2024 is made absolute. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

28.02.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.