

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52643-2024
Reserved on: 09.01.2025
Pronounced on: 27.01.2025

Noushad ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kshitiz Goel, Advocate and
Mr. Krishan Kanha, Advocate
for the petitioner.

Mr. Jasjit Singh, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0074	25.06.2024	Sirhind, District Fatehgarh Sahib	22-C, 29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. In paragraph 27 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. On June 25, 2024, based on chance recovery, the Police seized prohibited medicines that fall under the restricted category of manufactured drugs from the possession of co-accused Manpreet Singh alias Mani and Jaswant Singh alias Dogar.

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

5. During the custodial interrogation of the co-accused Manpreet Singh alias Mani and Jaswant Singh alias Dogar, they disclosed about the seller of the drugs.

6. It shall be relevant to refer to the status report that mentions the evidence of disclosure statements and the petitioner's arrest, which reads as follows:

“5. That thereafter, SI Amarjit Singh conducted the search of the accused Manpreet Singh @ Mani and Jaswant Singh @ Dogar as per the instructions of the DSP (PBI), Homicide & Forensic Unit, District Fatehgarh Sahib and the black plastic polythene bag in the possession of the accused Manpreet Singh @ Mani and Jaswant Singh @ Dogar was opened and checked wherein, 10 strips of intoxicant injections, each strip containing 5 intoxicant injections, totalling 50 intoxicant injections of LEEGESIC, Buprenorphine Injection IP, 2 mL with Batch No. DA616, MFG. DATE: MAR/2024, EXP. DATE: FEB/2026 and 50 vials of AVIL, 10 mL, with Batch No. 0424025, MFG. DATE: 04/2024, EXP. DATE: 03/2027 were recovered. The accused Manpreet Singh @ Mani and Jaswant Singh @ Dogar were unable to produce any permit or license for the recovered contraband. Since, the accused Manpreet Singh @ Mani and Jaswant Singh @ Dogar were found in the conscious possession of 50 intoxicant injections of Buprenorphine and 50 bottles of Avil, they were found to have committed the offence under 22C-61-85 NDPS Act. Accordingly, ruqa was sent for registration of FIR and consequently, case/FIR No.74 (supra) was registered.

6. That during the course of investigation, the spot was inspected, site plan was prepared and statements of witnesses were recorded under Section 161 Cr.P.C. The accused Manpreet Singh @ Mani and Jaswant Singh @ Dogar were arrested at the spot, in accordance with law. The recovered contraband along with the motorcycle bearing registration number PB-32L-4682 make black Pulsar motorcycle bearing registration were also taken into police possession, in accordance with law During interrogation, the accused Manpreet Singh @ Mani and Jaswant Singh @ Dogar disclosed that they had purchased the intoxicant injections and the Avil vials from one person named Ashok Kumar and they were habitual drug users and that some intoxicant injections they consumed for their own use, while others they sold to acquaintances. Based on the interrogation of the accused Manpreet Singh @ Mani and Jaswant Singh @ Dogar, Ashok Kumar was nominated as accused in the present case/FIR No. 74 (supra) vide Case Diary No. 1 dated 25.06.2024. During investigation, the offence u/s 29 NDPS was also found to be made out and accordingly, the same was added into the array of offences of the present case/FIR No. 74 (supra) vide DDR No. 39 dated 25.06.2024. A special report in this regard was prepared and sent to the senior officers and the Ld. Area Magistrate.

7. That the two Samples drawn by the Ld.Magistrate, were sent on 27.06.2024 & 01.07.204 to the Forensic Science laboratory Mohali, for the analysis and the report of FSL is received.

8. As per FSL Report Number 1582/2024/Toxi./ FSL/Pb. Dated 19.07.2024 the contraband recovered from the co accused Manpreet Singh and Jaswant Singh contained Buprenorphine Hydrochloride found present in the injection ampoules contained at (i) in the envelope. weight of the sample received (water based Injections) 9.970 grams (10ml x 0.997043 g/ml) (ii) Pheniramine Maleate found present in the injection vial contained at (II) in the envelope. Copy of FSL Report No 1582/2024/Toxi./ FSL/Pb. Dated 19.07.2024 is Annexure R-1.

9. *As per FSL Report Number 1654/2024/Toxi./ FSL/Pb. Dated 09.08.2024 the contraband recovered from the co accused Ashok Kumar contained Buprenorphine Hydrochloride found present in the injection contained in the parcel A-1. weight of the sample received (water based Injections) Total Volume of Sample x Density of water 10ml x 0.997043 g/ml 9.970 grams Pheniramine Maleate found present in the injection contained in the parcel B-1, C-1 and D-1. Copy of FSL Report No 1654/2024/Toxi./ FSL/Pb. Dated 09.08.2024 is Annexure R-2*

10. *That thereafter, on 27.06.2024, the accused Ashok Kumar was arrested in the present case/FIR No. 74 (supra). During interrogation, the accused Ashok Kumar made his disclosure statement u/s 27 of the Indian Evidence Act and in pursuance thereof, he got recovered 1,400 intoxicant injections of Buprenorphine and 1,400 small bottles of Avil, which were taken into police possession, in accordance with the law.*

11. *That thereafter, on 02.07.2024, the accused Ashok Kumar disclosed that he used to order the intoxicant injections and vials by calling from his mobile numbers 93541-xxxxx and 98155-xxxxx to the mobile number of Naushad, 87911-xxxxx. He further disclosed that the payment for these intoxicant injections and vials was transferred to Naushad's account No. 484381000xxxxx, at the Bank of Baroda, through mobile transactions. The accused Ashok Kumar also revealed that he used to place bulk orders for Buprenorphine Injections IP 2ML and AVIL 10ML from a person named Vinod, whose mobile number is 72064-xxxxx and that Vinod also used to order these intoxicant injections and vials from Naushad. Based on the interrogation of accused Ashok Kumar, Naushad and Vinod were nominated as accused in the present case/FIR No. 74 (supra) vide Case Diary No. 7 dated 02.07.2024.*

12. *That thereafter, on 07.07.2024, the accused Naushad (petitioner) was arrested from his house at Shahjahan Colony Meerut, Police Station Lasari Gate, District Merut, Uttar Pradesh in the present case/FIR No.74 (supra). During interrogation, Naushad (petitioner) disclosed that for the past 5 to 6 years, he had been engaged in the business of intoxicant injections and vials. He further revealed that he ordered the intoxicant injections and vials by calling from his mobile number 87911-xxxxx to the mobile number of Chaman Pahuja (petitioner) 97197-xxxxx. After receiving the orders, Chaman Pahuja (petitioner) prepared parcels of cardboard containing the intoxicant injections and vials and sent them. Naushad (petitioner) collected these parcels from the Meerut Bus Stand. Thereafter, Naushad (petitioner) sent these parcels of intoxicant injections and vials to the accused Ashok Kumar by contacting him on his mobile phone and arranging their transport through bus services. Ashok Kumar collected these parcels from the Ambala Cantt Bus Stand. Naushad further disclosed that he sold these intoxicant injections and vials to customers and Ashok Kumar transferred the payments for the intoxicant injections to his Bank of Baroda account No. 484381000xxxxx through mobile transactions. He also revealed that, in the past, he sent large quantities of intoxicant injections and vials to the accused Vinod. Based on the interrogation of accused Naushad*

(petitioner), Chaman Pahuja was nominated as accused in the present case/FIR No. 74 (supra) vide Case Diary No. 15 dated 11.07.2024.

13. That thereafter, on 15.07.2024, the accused Chaman Pahuja was arrested in the present case/FIR No. 74 (supra), During interrogation, the accused disclosed that he had been engaged in the business of intoxicating injections and vials for the past 5 to 6 years. He further disclosed that he used to procure these injections and vials from one Sanjeev Tiwari by contacting him on his mobile number, 98977-xxxxx. The accused also disclosed that he used to supply these intoxicating injections and vials to co-accused Naushad (petitioner). Furthermore, he admitted to selling some of the injections to local customers. He also disclosed that Sanjeev Tiwari collected payment in cash for the supplied injections and vials. The petitioner further disclosed that he operates a surgical store named "Gayatri" in Agra, through which he also supplies materials related to surgical operations to local hospitals. Based on the interrogation of the accused Chaman Pahuja, Sanjeev Tiwari was nominated as accused in the present case/FIR No. 74 (supra) vide case dairy No.21 dated 22-07-2024."

7. 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 their family.

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

9. The quantity allegedly involved in this case is prima facie 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 petitioner, which is taken from the status report, which reads as follows:

“Role of the petitioner

16. That the petitioner was nominated as accused in the present case/FIR No. 74 (supra) on the basis of the disclosure statement of the accused Ashok Kumar, who disclosed that he used to order the intoxicant injections and vials by calling from his mobile numbers 93541-xxxxx and 98155-xxxxx to the mobile number of Noushad (petitioner), 87911-xxxxx. He further disclosed that the payment for these intoxicant injections and vials was transferred to Noushad's (petitioner) account No. 484381000xxxxx, at the Bank of Baroda, through mobile transactions. The accused Ashok Kumar also revealed that he used to place bulk orders for Buprenorphine Injections IP 2ML and AVIL 10 ML from a person named Vinod, whose mobile number is 72064-xxxxx and that Vinod also used to order these intoxicant injections and vials from Noushad (petitioner). Based on the interrogation of accused Ashok Kumar, Noushad (petitioner) and Vinod were nominated as accused in the present case/FIR No. 74 (supra) vide Case Diary No. 7 dated 02.07.2024. The accused Chaman Pahuja supplied Buprenorphine injections and Avil vials to accused Noushad (Petitioner), Ashok Kumar, Manpreet Singh, and Jaswant Singh. The recoveries include 50 Buprenorphine injections and 50 small bottles of Avil from Manpreet Singh and 1,400 Buprenorphine injections along with 1,400 small bottles of Avil from Ashok Kumar.

Evidence against the petitioner

17. That the evidence against the petitioner is that he was named as an accused based on the disclosure statement given by co-accused Ashok Kumar disclosing that Ashok Kumar had obtained intoxicating injections and vials from Noushad (petitioner) and had Noushad (petitioner) obtained intoxicating injections and vials from Chaman Pahuja and further supplied them to other customers and sellers. The accused Noushad (petitioner) was arrested in the present case/FIR No. 74/2024 (supra) on 06.07.2024, who confessed to the commission of offences of the present case/FIR during interrogation besides disclosing that he used to procure these injections and vials from one Chaman Pahuja by contacting him on his mobile number, 97197-xxxxx. The petitioner also disclosed that he used to supply these intoxicating injections and vials to co-accused Ashok Kumar. Furthermore, he admitted to selling some of the injections to local customers. He also disclosed that the payment for these intoxicant injections and vials was transferred to his account No. 484381000xxxxx, at the Bank of Baroda, through mobile transactions. The petitioner further disclosed that he obtained the

contraband from the store of accused Chaman Pahuja named "Gayatri" in Agra. The petitioner also admitted to having been engaged in the business of intoxicating injections and vials for the past 5 to 6 years. During the investigation, the call detail records of the petitioner were also obtained and examined, revealing that he had been in contact with Chaman Pahuja and Ashok Kumar on multiple occasions. The examination of the call detail records of the accused Noushad (petitioner) revealed that he had regularly been in contact with Chaman Pahuja and Ashok Kumar on multiple occasions and dates including the dates of the present case/FIR. It is relevant to mention here that the petitioner purchases the contraband from Chaman Pahuja and supplies contraband to Ashok Kumar, who further supplies the same to accused Manpreet Singh and Jaswant Singh. The disclosure statements of the petitioner and his co-accused and the call details records of the present petitioner duly proves his involvement in the commission of offences of the present case/FIR."

12. Thus, the evidence collected so far consists of disclosure statements and the petitioner's confession without discovering any facts. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of BSA, 2023.

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. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, it is insufficient for the purpose of bail.

17. Given the penal provisions invoked, the legal admissibility of evidence collected against the petition, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to compliance with the terms and conditions mentioned in this order.

18. 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.

19. Without commenting on the case's merits, in the facts and circumstances unique and 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.

20. 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.

21. 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)	

22. This order is subject to the petitioner's complying with the following terms.

23. 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.

24. Given the background of allegations against the petitioner, it becomes paramount to protect 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 firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a 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 of release from prison and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under 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.

25. 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."

26. 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."

27. **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 Trial Court, which shall be at liberty to cancel this bail.**

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

29. 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.

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

(ANOOP CHITKARA)
JUDGE

27.01.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.