

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-60100-2024
Reserved on: 03.02.2025
Pronounced on: 14.02.2025

Jaswant Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Rubal Pawar, A.A.G. Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
120	10.06.2022	Baghapurana, District Moga	21 of NDPS Act (Section 25 and 29 of NDPS Act added later on)

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 para 13 of the bail application and as per para 11 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	35	05.04.2020	21/61/85 of NDPS Act	Kot Ise Khan

3. The facts and allegations are taken from the status report filed by the State. On 10.06.2022, based on secret information, the Police seized 2 kg of heroin from the car in which three co-accused, namely Jaswant Singh (petitioner) and co-accused, namely, Sukhchain Singh and Satnam Singh were travelling. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. Counsel for the petitioner seeks bail on 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 the reply. It would be appropriate to refer para 10 of the status report, which reads as follows:

"Role of the petitioner and incriminating evidence:

10. That the present petitioner along with co-accused Satnam Singh and Sukhchain Singh were caught red handed by the police with a commercial quantity of Heroin weighing 2 kg in their joint conscious possession. The search proceedings were conducted by Investigation Officer in the presence of a senior officer Sh. Shamsher Singh, DSP, Baghapurana. The quantity of 250 gm of Heroin is a threshold to consider the same under commercial quantity. Whereas, the Heroin involved in the present case is much more than commercial quantity and makes evident that the recovered contraband from the possession of petitioner were meant for further sale."

REASONING:

6. 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.

7. As per para 10 of the bail petition, the petitioner has been in custody since 10.06.2022 in this FIR.

8. 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 Act¹.

9. The petitioner is entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Dheeraj Shukla would be attracted when the three conditions are fulfilled,

- (a). The custody of more than two years and six months and the delay was not attributable to the accused.
- (b). The trial is at an initial stage.
- (c). The petitioner is the first offender.

¹ Supreme Court of India, in Rabi Prakash v. The State of Odisha, SLP (Crl) 4169-2023, Para 4, decided on 13 July 2023

10. 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.

11. 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 for further pre-trial incarceration at this stage.

12. 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.

CONDITIONS:

13. 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.

14. 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)	

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

16. 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.

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

18. 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."

19. 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."

20. **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.**

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. 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.

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

14.02.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.