

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-65473-2024
Reserved on: 13.01.2025.
Pronounced on:15.01.2025

**Lovepreet Singh @ Labha @ Labh Singh
VS.**

... PETITIONER

State of Punjab

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ramnish Puri, Advocate, for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
54	31.03.2024	Chheharta, Amritsar	21-B, (27-A, 29 of the 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 paragraph 14 of the bail petition, the accused declares that he has no criminal antecedents.

3. Counsel for the petitioner submits that co-accused of the petitioner has been granted regular bail by this Court vide order dated 19.12.2024 passed in CRM-M-57896-2024 and, therefore, the petitioner is entitled for regular bail on the ground of parity as case of petitioner is on similar footing and refers the above-said order which reads as follow:-

“The facts and allegations are taken from the reply filed by the State:-

“3. That it is submitted that as per the report furnished by the Station House Officer, Police Station Chheharta, Amritsar City, on 31.03.2024, the police party headed by Sub Inspector Jagga Singh, Police Station Chheharta, Amritsar in connection with patrolling and in search of bad elements had apprehended the accused Nishan Singh @ Pinta S/o Subeg Singh R/o Village Basarke, Police Station Gharinda, Amritsar Rural as he upon seeing the police party got perplexed and turned backwards, who took out one polythene bag from pocket of his 'payjama' and tried to throw on the ground. Upon asking about the contents of the polythene bag, he had disclosed that it contained heroin. The above said accused Nishan Singh @ Pinta was informed about his legal right to be searched before a Magistrate or some gazetted officer

but he consented to be searched by Sub Inspector Jagga Singh. Therefore, the above said polythene bag was checked by Sub Inspector Jagga Singh and it was found containing 10 gm of heroin, one electronic weighing scale and drug money Rs. 2000/-, which were taken into police possession in accordance with law. Therefore, the present case FIR No. 54 dated 31.03.2024, under Sections 21-B, 27-A/61/85 NDPS Act, Police Station Chheharta, Amritsar was registered in this respect and the above said accused Nishan Singh @ Pinta was arrested in this case by SI Jagga Singh.

4. That it is submitted that on the next day i.e. 01.04.2024, the accused Nishan Singh @ Pinta along with a parcel of contraband was produced before the Court of learned Judicial Magistrate First Class, Amritsar. The proceedings under Section 52A NDPS Act were initiated and police remand of the accused Nishan Singh @ Pinta was granted by the learned Magistrate.

5. That during investigation of the present case FIR No. 54 dated 31.03.2024, the accused Nishan Singh @ Pinta made disclosure statement dated 03.04.2024 before the investigating officer that the 10 gm heroin, which was recovered from him, was brought by his elder brother Lovepreet Singh @ Labhu S/o Subeg Singh from some person and used to give him for selling it. Therefore, based on his disclosure statement, the above said Lovepreet Singh @ Labhu was also nominated as co-accused and offence under Section 29 NDPS Act was added in this case vide GD No. 35 dated 03.04.2024. After completion of police remand, the accused Nishan Singh @ Pinta was again produced before the learned jurisdictional Court and was sent to judicial custody.

6. That during the course of investigation of the present case FIR No. 54 dated 31.03.2024, the co-accused Lovepreet Singh @ Labhu was arrested on 01.05.2024. He was produced before the learned jurisdictional Court and his police remand was obtained. During police remand, the co-accused Lovepreet Singh @ Labhu made disclosure statement dated 02.05.2024 before the investigating officer that the above said 10 gm of heroin which was recovered from his brother Nishan Singh @ Pinta was bought from Rajbir Singh @ Raja (present petitioner) by him. Therefore, based thereon, the present petitioner Rajbir Singh @ Raja was also nominated as co-accused in this case vide GD No. 56 dated 02.05.2024.”

On March 31, 2024, based on chance recovery, the Police seized 10 grams of heroin from the possession of the main accused, Nishan Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

During the custodial interrogation, the main accused, Nishan Singh, named his brother Lovepreet Singh as the owner of heroin and stated that he was asked by his brother to sell it. Based on this confession, the investigator arraigned and arrested him as an accused.

During the custodial interrogation, the co-accused, Lovepreet Singh, named the petitioner Rajbir Singh as the seller of heroin. Based on this confession, the investigator arraigned the petitioner as an accused.”

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 their family and petitioner is entitled for bail on parity.

5. The State’s counsel opposes bail but does not refute the claim of the petitioner.
6. Thus, the evidence collected so far consists of disclosure statements without any discovery of fact.
7. 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.

8. As per State version 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.
9. Dealing in 10 grams of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	10 Gram
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	4.00%

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.	56
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin
Other non-proprietary name	*****
Chemical Name	Diacetylmorphine
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	11/14/1985

Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; 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.

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

11. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

12. In Sami Ullaha v Superintendent Narcotic Control Bureau, (2008) 16 SCC 471, the Hon’ble Supreme Court holds that in intermediate quantity, the rigors of the provisions of Section 37 may not be justified.

13. 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 Actⁱ.

14. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, per paragraph 9 of the bail petition, the petitioner has been in custody since 01.05.2024. As such, the petitioner's total custody in this FIR is 08 months and 12 days. 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,.

15. 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 the official webpage of this Court.

16. 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.

17. 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)	

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

19. 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.

20. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice can be taken care of

by imposing elaborative and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)*, 2020:INSC:106 [Para 92], (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

21. 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, 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 offence.

22. This bail is conditional, and the foundational condition is that if the petitioner repeats the 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.

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

24. 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.

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

15.01,2025
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(ANOOP CHITKARA)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: No.