

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

CRM-M No.11119 of 2018

Date of Decision: 14.09.2018

Gurwinder Singh @ Sonu

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. D.S. Sandhu, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. D.A.G., Punjab.

DAYA CHAUDHARY, J.

This petition has been filed under Section 439 of Code of Criminal Procedure for grant of regular bail to petitioner-Gurwinder Singh @ Sonu in case FIR No.73 dated 02.07.2015 registered under Sections 22/61/85 of the NDPS Act at Police Station Satnampura, District Kapurthala.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, he was not involved. As per allegations levelled in the FIR, the petitioner was apprehended while going on a motorcycle by ASI Arjan Singh. The alleged recovery was effected from the pocket of the trouser worn by the petitioner, which was kept in a polythene envelope. Learned counsel also submits that the provisions of Section 50 of the NDPS Act have not been complied with being mandatory. Even the compliance of Sections 41, 42 and 43 of the NDPS Act have also not been made. It is also the argument of learned

counsel for the petitioner that the search was conducted but neither the gazetted officer nor any Magistrate was called at the spot. Earlier the petitioner was granted interim bail vide order dated 01.09.2015 passed by the Judge, Special Court, Kapurthala. Thereafter, the Chemical Examiner's Report was received and as per said report, the substance was found to be *Alprozalam* and by finding the recovery being commercial, the petition for bail was dismissed on 07.03.2017. Learned counsel further submits that the investigation has been completed as the final report has been submitted before the Court. No useful purpose would be served by keeping the petitioner behind bars. At the end, learned counsel for the petitioner submits that the petitioner may be released on interim bail on medical grounds as proper treatment is not being provided to him in the jail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner is involved in a case where the recovery of the substance effected from him is commercial. He also submits that the petitioner is in custody, which is less than six months and the petitioner does not deserve the concession of bail. Learned State counsel also submits that the petitioner remained as a proclaimed offender for a period of one year and in case, he is released on bail, he may abscond again.

Heard the arguments of learned counsel for the parties and have also perused the contents of the FIR as well as other documents available on the file.

Admittedly, the petitioner was declared as a proclaimed offender on 17.01.2018 and thereafter, he was arrested on 12.02.2018. The alleged recovery is commercial in nature. The petitioner was earlier released

on interim bail and thereafter, he has misused the concession of bail as he remained absconded and thereafter, he did not surrender but he was arrested. The offence is serious in nature.

In the decision relied upon by the applicant in [Jayendra Saraswathi Swamigal v. State of Tamil Nadu](#) reported as [AIR 2005 SC 716](#) the Hon'ble Supreme Court considered the law and examined the considerations which normally weigh with the Court in granting bail in non-bailable offences. The considerations expounded by the Hon'ble Supreme Court are as follows:-

“15.The considerations which normally weigh with the Court in granting bail in non-bailable offences have been explained by this Court in **State v. Capt. Jagjit Singh** [AIR 1962 SC 253](#) and **Gurcharan Singh v. State (Delhi Admn.)** [AIR 1978 SC 179](#) and basically they are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.....”

The Supreme Court in terms of its earlier decision in **State v. Captain Jagjit Singh** reported as [AIR 1962 SC 253](#), has observed as under:-

“5.Among other considerations, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence, is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering its seriousness, the court should refuse bail even though it has very wide powers under Section 498 of the Code of Criminal Procedure.”

In [State Of U.P Through CBI v. Amarmani Tripathi](#), reported as (2005) 8 SCC 21, the Hon'ble Supreme Court in paragraph 18 observed as follows:-

“18. It is well settled that the matters to be considered in

an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v.) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail[see [Prahlaad Singh Bhati v. NCT, Delhi](#) [(2001) 4 SCC 280: 2001 SCC (Cri) 674] and **Gurcharan Singh v. State (Delhi Admn.)** [(1978) 1 SCC 118:1978 SCC (Cri) 41:AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in [Kalyan Chandra Sarkar v. Rajesh Ranjan](#) [(2004) 7 SCC 528: 2004 SCC (Cri) 1977]: (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See [Ram Govind Upadhyay v. Sudarshan Singh](#) [(2002) 3 SCC 598: 2002 SCC (Cri) 688] and [Puran v. Rambilas](#)[(2001) 6 SCC 338: 2001 SCC (Cri) 1124].)”

In [Prahlaad Singh Bhati v. NCT, Delhi](#) reported as (2001) 4 SCC

is of such character that his mere presence at large would intimidate the witnesses, then bail should be refused.

In the present case, the petitioner remained absconded and was declared as a proclaimed offender for a period of one year. Thereafter, he was arrested. Moreover, in view of nature and gravity of offence and in a case of NDPS Act, where severe punishment is there where alleged recovery is commercial in nature and there is a likelihood that he may repeat his action as has been done and he may avoid to attend the Court proceedings, it is not in the interest of justice to enlarge him on bail at this stage.

The petition is accordingly dismissed.

(DAYA CHAUDHARY)
JUDGE

14.09.2018

gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No