

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9987-2022
Reserved on: 25-03-2022
Pronounced on: 04.05.2022

Vijay Kumar and another ...Petitioners
Versus
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Aditya Sanghi, Advocate, for the petitioners.
Mr. Vikrant Pamboo, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
470	19.12.2021	Ellenabad, District Sirsa	21 (c) of NDPS Act.

1. The petitioners under arrest for violating the provisions as mentioned above of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), per the FIR captioned above, have come up before this Court under Section 439 Cr.P.C seeking bail.
2. In the end note of the bail, the accused declares that they have no criminal antecedents. Paragraph 10 of the status report, based on the data, does not refute this contention.
3. On 19-12-2021, based on secret information, the police searched a car being driven by Sandeep Kumar. A person sitting in the front left seat revealed his name as Vijay Kumar, and one person sitting in the rear seat disclosed his name as Karamjeet Singh. From the search of Karamjit's shirt's pocket, the investigator noticed a polythene packet, which had smack in it and it weighed 405 grams. The laboratory had tested the substance as heroin. After the arrest, the accused revealed during the interrogation that they had purchased the substance from Raju alias Dashrath for a sum of Rs. 60,000/-. On the asking of the seller Raju, the purchaser Karamjeet had transferred an amount of Rs. 60,000/- in the account of one Gowardhan, petitioners herein by various transactions made on 16-12-2021. The police also arrested both Gowardhan and Raju, alias Dashrath.
4. Ld. Counsel for the petitioners contends that the pre-trial incarceration would

cause an irreversible injustice to the petitioners and family.

5. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

REASONING:

6. Thus, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioners to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. The State has filed a status report through the concerned DySP. A perusal of the status report reveals that the only evidence collected so far to implicate the petitioners is their disclosure statements and nothing else. In Tofan Singh v. State of Madras, the majority view of the larger bench of Hon'ble Supreme Court is that a confessional statement is not admissible in evidence. This view has been followed by Hon'ble Supreme Court in Cr.A 1273 of 2021, Sanjeev Chandra Agarwal v. Union of India, decided on 25th October, 2021.

8. The status report filed by the police reveals that the investigator arraigned the petitioners as an accused based on the disclosure statement of the main accused from whose possession the investigator had recovered the contraband.

9. As per the prosecution's case, the recovery of heroin was from the shirt worn by Karamjeet, who was sitting on the car's rear seat. There is no evidence of their prior acquaintances, and even otherwise, the status report is silent about investigating this aspect.

10. Apart from above, there is no other evidence collected at this stage to connect the petitioners with the main accused. Thus, there is no justification to deny bail. Consequently, the petitioners have satisfied the first rider of section 37 of the NDPS Act. Regarding the second rider of S. 37, the petitioners have no criminal antecedents, and this court will put very stringent conditions in this order to ensure that the petitioners do not repeat the offence.

11. 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, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

13. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

14. Given above, provided the accused is not required in any other case, the petitioners shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs.Ten thousand (INR 10,000/-) each and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-) each, to the satisfaction of the concerned Court/ Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any nearest Illaqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioners before the Court.

15. In the alternative, the petitioners may furnish a personal bond of Rs.Ten Thousand only (INR 10,000/-) each, and hand over to the concerned court a fixed deposit(s) for Rs.Ten Thousand only (INR 10,000/-) each, made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the well-established and stable private banks, with the clause of automatic renewal of the principal and the interest reverting to the linked account.

16. The fixed deposits need not necessarily be made from the applicant's account. If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned court. If made online, its printout, countersigned by the accused, shall be given; and the depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest that it has been tendered as surety. Such information be sent either by e-mail or by post/courier about the fixed deposit, whether made on paper or in any other mode, along with its number and FIR number. After that, the applicant shall hand over such

proof and endorsement to the concerned police station. Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, as the case may be. Subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes, if any, shall be endorsed/returned to the depositor.

17. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply to the investigator or the concerned court to substitute fixed deposit with surety bonds and vice-versa.

18. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioners along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioners shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

19. The petitioners to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

20. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioners 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 might be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioners shall not be called before 8 AM and shall be let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

21. The petitioners shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the police, or the court, or to tamper with the evidence.

22. Within ten days of release from prison, the petitioners shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned above. The petitioners shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the

petitioners shall immediately do so. The petitioners shall neither clear the location history, WhatsApp chats, call logs nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whichever is earlier.

23. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within ten days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioners shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

24. During the trial's pendency, if the petitioners repeat or commit any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

25. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioners understands.

26. If the petitioners find bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioners find bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioners may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

27. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

28. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the

Investigator/Officer-In-Charge shall give the petitioners notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

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

30. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

31. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

04.05.2022
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.