

CRM-M-12563-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-12563-2022
Reserved on: 25.03.2022
Pronounced on: March 31, 2022

Manjinder Singh alias Doctor ...Petitioner

Versus

State of Punjab and another ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. G.K. Mann, Sr. Advocate with
Mr.Gursewak Singh, Advocate
for the petitioners.

Ms. Jaspreet Kaur, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
58	04.04.2002	Lopoke, District Amritsar	21/61/85 of NDPS Act

1. Challenging the order of proclamation, the petitioner has come up before this court under section 482 of Code of Criminal Procedure, 1973 (CrPC).
2. After arguing for some time, Id. counsel for the petitioner submits that the criminal justice system must not hamper and suffer because of the petitioner. Thus, would confine the prayers in the petition to grant of bail on the petitioner’s surrendering before the majesty of the concerned court, and reserving liberty to raise the given-up relief in the subsequent petition(s), if the need so arises.
3. Id. counsel appearing for the State has strenuously opposed this petition, including the limited relief as confined by the petitioner.
4. Given above, this court is confining the adjudication of this matter to the extent mentioned herein before, reserving the liberty to the petitioner as prayed.
5. The gist of the facts relevant to decide the remaining prayer is as follows.
“Wayback on 04.04.2002, SHO received secret information that Manjinder Singh @ Doctor petitioner herein is selling smack in concrete bunker at Kohali. The informant further told that if he is apprehended then the substance can be recovered. Based on this information, the police officials reached at the spot, nabbed the accused and

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recovered 2 gms of smack (*Heroin*). Afterthat vide order dated 16.04.2002, learned Judge, Special Court, Amritsar released the accused on bail because the quantity was small.

6. On the commencement of trial, the accused did not turn up which finally led to issuance of non-bailable warrants and subsequently proclamation. Vide order dated 29.03.2006, learned JMIC, Ajnala declared the accused as proclaimed offender. Subsequently it transpires that the petitioner was gone to France and vide letter dated 18.10.2021, the Assistant Consular Officer for Embassy of India in France issued a show cause notice to him. Petitioner has come up before this Court challenging the proclamation order.

7. The petitioner offers the following explanation for non-appearance, which read as follows:

“That the police failed to inform the court that the petitioner has left the country and he may be served through embassy and petitioner was not aware about the proceedings which was going on his absence.”

8. The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, which establishes the bonafide at this stage. Without adjudicating the explanation offered and stand taken by the petitioner, this court, in the exercise of its inherent powers under section 482 CrPC, deems it appropriate to grant the following limited relief to the petitioner, subject to the compliance of the conditions mentioned in this order.

9. 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 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, which specify an offence, also 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 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.

10. The quantity allegedly involved is just 2 grams of heroin. The substance finds mentioned at entry no. 56 of the table specifying small and commercial quantities, as per which the quantity greater than 250 grams falls in commercial quantity and lesser than 5 grams as small. Thus, the quantity allegedly involved in this case is small. Given this, the rigours of S. 37 of the NDPS Act do apply in the present case.

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11. 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.

12. In *Gurbaksh Singh Sibbia v State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

13. The possibility of the accused henceforth not attending the trial, 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. In *Sumit Mehta v. State of N.C.T. of Delhi*, (2013) 15 SCC 570, Para 11,

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Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

14. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet with the following order.

15. The petitioner shall surrender before the concerned court on or before April 30, 2022. On appearance, the concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing additional conditions, as it may deem appropriate in the background of the accused's conduct.

16. The petitioner to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, 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 petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

17. **There shall be a stay of the petitioner's arrest as well stay of the impugned order declaring the petitioner as a proclaimed offender in the case mentioned above up to April 30, 2022;** however, if the petitioner fails to appear within the time stipulated above, then stay on arrest shall stand vacated without any further reference to this court. It is clarified that if the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner, in the matter mentioned above shall stand recalled and canceled.

18. **Within ten days from appearance before the court,** the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls 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, whatever is earlier.

19. By April 30, 2022, the petitioner shall deposit a sum of rupees ten thousand in 'High Court Lawyers Welfare Fund,' Account number 650186922589, SB, IFCI code

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SBIN0050306, Branch Code 50306, Brach Address State Bank of India, High Court Branch, Sector 1, Chandigarh. After depositing, the petitioner shall file the proof of deposit, before the concerned court and send its copy alongwith a copy of this order to the Secretary, Punjab & Haryana High Court Bar Association, either in physical or electronic mode.

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

21. 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.

22. *There would be no need for a certified copy of this order, 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. 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 partly allowed to the extent mentioned above. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

31.03.2022
Sonia arora

Whether speaking/reasoned: Yes
Whether reportable: NO.