

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27095-2022 (O&M)
Reserved on: 13.09.2022
Pronounced on: 15.09.2022

Harwinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
243	19.08.2020	Shahkot, District Jalandhar	21 of NDPS Act & 25 of Arms Act (25, 29 of NDPS Act added later on)

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above had come up before this Court under Section 438 Cr.P.C seeking anticipatory bail.
2. In paragraph 13 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	173	13.06.2020	21 of NDPS Act	Sultanpur Lodhi, District Kapurthala

3. On 19.08.2020, the police party had erected a check post and at that time the police party noticed a car and on seeing the police party, the said car tried to cross the barricade with a high speed, however, the car was stopped and the occupant nabbed, who disclosed his name as Chanan Singh. After following the procedure of NDPS Act and Cr.P.C, the police recovered 500 grams of Heroin from the car along with one revolver which was on the waist of Chanan Singh. Chanan Singh was arrested and during his disclosure statement, he disclosed the involvement of the petitioner and even the car belongs to him. After this information, the petitioner was arraigned as an accused.

4. Vide order dated 07.07.2022, a co-ordinate Bench of this Court had granted interim bail by passing the following order:

"Prayer in this petition is for grant of anticipatory bail in FIR No. 243 dated 19.08.2020 under Section 21 of NDPS Act and Section 25 of Arms Act (Sections 25 & 29 of NDPS Act were added later on), registered at Police Station Shahkot, District Jalandhar.

On 21.06.2022, following order was passed by the Coordinate Bench of this Court:-

"It is submitted by learned counsel appearing on behalf of the petitioner that the main accused Chanan Singh had borrowed the car owned by the petitioner and the contraband which includes 500 grams of heroin as well as a country-made pistol along with live cartridges and electronic weighing machine do not belong to him. He contends that the recovery already stands effected and the custodial interrogation of the petitioner is not required....."

Learned State counsel, on instructions from ASI Jaswinder Singh, submits that the petitioner is involved in the case on the basis of statement of co-accused Chanan Singh, who was driver of the car. It is further submitted that in fact, the car is owned by the petitioner and he has no history of involvement in any such or similar case.

List again on 04.08.2022.

In the meantime, the petitioner is directed to appear before the Investigating Officer within a period of 10 days to join investigation and he shall be released on interim bail on furnishing bail/surety bonds subject to the following conditions:

- 1. He shall make himself available for interrogation by a police officer as and when required;*
- 2. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and*
- 3. He shall not leave India without previous permission of the Court."*

5. After that there is no allegation that the petitioner did not cooperate.

6. A perusal of the bail petition reveals that the statement which was made on behalf of the petitioner before the concerned Court is that Chanan Singh had borrowed

the car from the petitioner and the petitioner had no link with recovered Heroin or the pistol is not mentioned in the petition which is supported by an affidavit. In paragraph 4, the petitioner states that the allegations against him were that the car in question which was used in commission of offence was in his name and beside that no role was attributed to him. Thus the petitioner's argument for procuring interim bail did not substantiate from the bail petition.

7. The State has placed reverse burden on the accused in case the recovery is of commercial quantity. In the present case, the quantity of Heroin which was recovered is 500 grams whereas the quantity greater than 250 grams falls as commercial quantity. Thus the quantity recovered is commercial and it is for the accused to discharge and meet the burdens placed by the legislature upon him under Section 37 of the NDPS Act.

8. A perusal of the entire petition nowhere discharge such burdens, rather in paragraph 13 the petitioner mentions about the criminal history under NDPS offence.

9. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

10. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. Thus, the petitioner has failed to make a case for bail at this stage.

11. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for anticipatory bail under section 438 Cr.P.C.

12. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed in aforesaid terms. Interim order dated 07-07-2022 is vacated with immediate effect. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

15.09.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.