

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34592-2022
Reserved on: 05.09.2022
Pronounced on: 14.09.2022

Sher Kaur @ Shero ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Satnam Singh Gill, Advocate for the petitioner.
Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
56	11.03.2022	City Samana, District Patiala	304, 34 IPC (Section 29 NDPS Act added later on)

1. The petitioner under arrest for violating the provisions as mentioned above of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), per the FIR captioned above, has come up before this Court under Section 439 Cr.P.C. seeking bail.
2. In paragraph 23 of the bail petition, the accused declares that she has following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	135	13.09.2013	15 of NDPS Act	City Samana, District Patiala
2.	90	27.05.2015	15 of NDPS Act	City Samana, District Patiala
3.	222	13.09.2013	15 of NDPS Act	City Samana, District Patiala
4.	74	04.05.2017	22 of NDPS Act	City Samana, District Patiala
5.	222	30.08.2022	15 of NDPS Act	City Samana, District Patiala

3. The deceased took overdose of heroin, which led to his death, and the petitioner and her accomplices were the sellers of the drugs.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner 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. The quantity allegedly involved in this case is not commercial. Given this, the rigours of S. 37 of the NDPS Act would not apply in the present case.

7. Given the nature of allegations coupled with the fact that the petitioner is a woman aged 48, and is incarcerated since 23rd May 2022, further pre-trial custody would not be justifiable.

8. On the foundations of Article 15 of the Constitution of India, the legislature carved out exceptions to uplift women and children under the first proviso to section 437 of the Code of Criminal Procedure, 1973, for a person below sixteen years of age, woman, sick and infirm, to meet the objectives of social justice as enshrined in India's Constitution.

9. In *Maqsoodan v. State of Haryana*, (2002) 10 SCC 97, Supreme Court granted anticipatory bail on the facts of the case, coupled with the fact that the accused was a woman, and involved in a relatively less serious offence.

10. In *Lingaram Kodopi v. State of Chhattisgarh*, (2014) 3 SCC 474, Hon'ble Supreme granted bail to a woman by holding as follows:

[15]. On the basis of the aforesaid orders, both the appellants are on bail with the condition that they would not enter the State of Chhattisgarh during this period. Other two accused persons have already been granted bail. Charges are yet to be framed. Soni Sori is having medical problems as well. There are certain circumstances, pleaded by the appellants, and if ultimately established, there may be a possibility of proving the innocence of the appellants. Soni Sori has lost her husband and has to look after her children who are of tender ages. Lingaram Kodopi, who is a young man of 24 years, claims to be genuinely attempting to establish himself as a good citizen in the society. Taking into consideration all these circumstances cumulatively and going by the past history, as demonstrated by both the Counsel for the appellants, we are of the opinion that the appellants deserve to be enlarged on bail during the pendency of trial on furnishing personal securities in the sum of L 50,000/- with two sureties each of the like amount, to the satisfaction of the Trial Court.

[16]. At the same time, we agree with Mr. Mohta that there should be some stringent conditions for grant of bail to the appellants. Accordingly, we order that it would be subject to the condition that the appellants shall report to the concerned police station once a week i.e. at 10.30 a.m. on every Monday to show their presence. They would be permitted to take along their lawyer. Further, they shall appear before the Trial Court on each and every date of hearing and shall not seek exemption except when on a particular date they are unable to appear because of the reasons beyond their control, like illness etc. They shall also inform the Court about their place of

stay/residence and disclose to the Court as to when there is a change of residence. Further, they shall not leave the station or travel abroad without the prior permission of the trial court.

11. The petitioner had a similar case under NDPS; however, given the nature of the evidence collected against the petitioner, the allegations in the present case would not justify the pre-trial custody because of the previous history

12. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

13. 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.

14. 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.

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, 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.

16. 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.

17. Given above, provided the accused is not required in any other case, the petitioner shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs. Ten thousand (INR 10,000/-) and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), 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 Ilaqa 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 petitioner before the Court.

18. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the concerned court a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposit 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.

19. The fixed deposit 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 Cr.P.C., 1973, as the case may be. Subject to the proceedings under S. 446 Cr.P.C., the entire amount of fixed deposit, less taxes, if any, shall be endorsed/returned to the depositor.

20. 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.

21. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner 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.

22. The petitioner 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.

23. The petitioner 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.

24. Within fifteen days of release from prison, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned above. 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, 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.

25. 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.

26. During the trial's pendency, if the petitioner repeats or commits 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 remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

27. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the society. In *Mohammed Zubair v. State of NCT of Delhi*, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

28. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioner finds 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 petitioner 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.

29. 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.

30. 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.

31. In return for the protection from further incarceration at this stage, the Court believes that the accused shall also reciprocate through desirable behaviour. **If the petitioner again indulges in drugs, then while considering grant of bail in such cases, the concerned Courts may keep it as a factor that this Court had granted a final opportunity to the petitioner to mend her ways.**

32. 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.

33. *There would be no need for a certified copy of this order 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. 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

14.09.2022
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.