

CRM-M-35603-2022

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

CRM-M-35603-2022
Decided on 10.08.2022

Shamsher Singh @ Sher Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gaurav Tyagi, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
549	17.06.2022	Assandh, District Karnal, Haryana	21(c) and 22(c) of NDPS Act

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 CrPC seeking interim bail on the following grounds, which are mentioned in paras 3 & 4 of the petition, which reads as follows:-

“3. That it is also pertinent to mention here that the petitioner had immediately approached the Id. Lower court for grant of interim ball for 15 days so as to perform his mother's cremation and last rites and rituals. But the Id. Lower court did not take into consideration the entire facts and ultimately dismissed the interim bail of the petitioner citing the quantity of contraband recovered from the petitioner. However, the petitioner was only allowed to perform the cremation of his mother on 05.08.2022 at 2.30 pm at his residence and cremation ground in village Dera Gama, PS Assandh, District Karnal, in adequate police security and custody. A true copy of the order dated 05.08.2022 passed by the Id. ASJ, Karnal, is annexed herewith as Annexure P-2.

4. That infact the petitioner is the eldest of the two sons and is the only son residing in India as the younger brother of the petitioner is residing in Dubai and for some unavoidable reasons he is unable to come to India. Therefore, the presence of the petitioner is very much necessary in his family at his village for performing customary last rites

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and rituals (Bhog and Tehravi) of his deceased mother. The father of the petitioner also is around 80 years old and is not keeping well these days.”

2. In paragraph 8 of the bail petition, the accused declares that he has no criminal antecedents.

3. Learned counsel for the petitioner on instructions submits that in case the petitioner is granted bail, he shall not run away and shall surrender on the date fixed positively. He further contends that the denial of interim bail would cause an irreversible injustice to the petitioner and family.

4. While opposing the interim bail, Ld. counsel appearing for the State does not dispute the factum of the grounds on which the petitioner is seeking interim bail.

REASONING:

5. A prisoner should not be ordinarily denied the opportunity of attending a significant family event merely because the immediate relatives, in addition to friends and the neighbors, have become accustomed to usually caring for the family members of a person under incarceration and the family is not depend on the prisoner. The prisoner himself not only longs for presence, cooperation, support, and even financial help of the family but is also expected by the near and dears in return for their support towards his family to reciprocate by attending their sacrosanct family functions, despite such attendance carrying the risk of social boycott or dejection.

6. 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 limited period interim 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.

7. Given above, provided the accused is not required in any other case, the petitioner shall be released on interim bail in the FIR mentioned above, subject to furnishing a personal bond 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.

8. 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

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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.

9. 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.

10. Immediately on reaching home/venue, 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 surrender.

11. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. **It is clarified that in case the petitioner does not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the petitioner to reform and live a normal life but did not mend his ways.**

12. 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 witnesses, victim, and their families. 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."

13. 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.

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14. 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.

15. **The petitioner shall surrender in prison from where he was released, on or before 22.08.2022, by 4 p.m.**

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. Liberty reserved to file a fresh petition for regular bail. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

10.08.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.