

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38917-2022
Reserved on: 31.08.2022
Pronounced on: 19.09.2022

Samanpreet Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
148	15.05.2021	Ranjit Avenue, District Police Commissionerate, Amritsar	22/25/29/61/85 of NDPS Act, 1985

1. Aggrieved by the rejection of bail by Sessions Judge vide order dated 30.07.2022 and 09.08.2022 on the ground that quantity of the substance recovered by the petitioner falls under commercial quantity, the accused has come up before this Court under Section 482 Cr.P.C.
2. Vide order dated 24.09.2021, Additional Sessions Judge, Amritsar had granted anticipatory bail to the accused and this order was made absolute on 29.09.2021. After that when the matter was taken up before Additional Sessions Judge, Amritsar on 30.07.2022, the Court passed the following order:-

“ It is also submitted that the present case relates to the recovery of commercial quantity of contraband as per act 1985, in view of FSL report No.805/2021, dated 05.08.2021. As per the allegations, prima facie both the accused have hatched a criminal conspiracy and kept the alleged contraband in their conscious possession. Hence the accused Samanpreet Singh is not entitled for regular bail which has been opposed by the Id. APP for the State the bars under Section 37 of the NDPS Act, hence the interim bail granted vide order dated 24.09.2021 is canceled and accused Samanpreet Singh is taken into judicial custody.”

3. A perusal of the order dated 30.07.2022 reveals that learned Additional Sessions Judge, Amritsar was of the opinion that quantity of contraband is commercial and given the FSL report, it was observed that the petitioner is not entitled to regular bail because of the bar created by Section 37 of NDPS Act and as such cancelled the bail.

4. A perusal of the order dated 24.09.2021 reveals that the Additional Sessions Judge, released the petitioner on interim anticipatory bail on furnishing bonds. After that vide order dated 29.09.2021, the bail application was allowed and interim order dated 24.09.2021 was made absolute. While absolving the interim bail, the Sessions Judge had considered making of disclosure statement made by Prabhjit Singh the main accused implicating the petitioner. The order further reveals that it was not an interim bail but a complete bail under Section 438 Cr.P.C. Thus the order dated 30.07.2022 passed by Additional Sessions Judge first of all terminating anticipatory bail granted vide order dated 24.09.2021 and the same was made absolute on 29.09.2021, which is patently misleading the said order. Furthermore the Additional Sessions Judge while cancelling the bail adjudicated that the petitioner was not entitled to bail, given the bars under Section 37 of NDPS Act and order dated 24.09.2021 is cancelled, whereas the said order had already made absolute on 29.09.2021. It appears that concerned learned Judge did not read the case file properly and also did not bother to read the previous orders, he has acted like an appellate Court reversing the bail granted by the same Court.

5. Given above, the order dated 30.07.2022 vide which interim order dated 24.09.2021 was recalled (which had also made absolute vide order dated 29.09.2021) and even otherwise the order was on merit, abuse of process of Court. Thus to meet the ends of justice, this Court intervene and set aside the order dated 30.07.2022. The bail bonds furnished by the petitioner are restored and petitioner is directed to be released from the Jail by furnishing the personal bonds of Rs.10,000/- and subject to the compliance of the following further conditions:

6. 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.

7. 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.

8. 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.

9. 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.

10. 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."

11. 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.

12. These conditions have also been imposed by exercising powers under Section 482 Cr.P.C. Consequently, the order dated 09.08.2022 rejecting the bail under Section 439 Cr.P.C. becomes infructuous and is also recalled.

13. 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.

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

19.09.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.