

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50243-2021
Reserved on: 06.12.2021
Pronounced on: 18.01.2022

Paramjeet Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Gurvir Kaur Gill, Advocate for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0074	25.06.2021	Sadar Jalalabad, District Fazilka	21 of NDPS Act

1. The petitioner who was apprehended alongwith his brother on an Activa, which led to recovery of 100 grams of heroin (Diacetylmorphine), has come up before this Court seeking bail on the ground that the quantity of contraband is less than commercial and rigours of S. 37 of NDPS Act do not apply and also on medical ground of suffering from acute diabetes.

2. Para 12 of the bail petition and status report mentions the following criminal history:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	232	15.08.2004	13-A/3/67 of Public Gambling Act	Sadar Jalalabad
2.	197	13.12.2020	21 of NDPS Act, 1985	Sadar Jalalabad
3.	25	01.03.2016	21 of NDPS Act, 1985	Sadar Jalalabad
4.	37	27.04.2019	22 of NDPS Act, 1985	Sadar Jalalabad
5.	35	31.03.2021	379, 411 IPC & 25, 54 & 59 of Arms Act	Sadar Jalalabad

3. Ld. Counsel for the petitioner contends that the petitioner is severe diabetic patient and is having swelling on his left leg, which may result into its amputation. Ld. Counsel further argued that the pre-trial incarceration would cause an irreversible

injustice to the petitioner and family.

4. While opposing the bail, the contention on behalf of the State is that drug menace is increasing every day, and the accused has criminal antecedents and is likely to repeat the offence after his release on bail.

REASONING:

5. The quantity allegedly involved is 100 grams of heroin, which is less than the commercial quantity as per the notification issued under Section 2 (viia) and (xxiia) of the Narcotics Drugs and Psychotropic Substances Act. Given this, the rigours of S. 37 of the NDPS Act do not apply in the present case.

6. 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.

7. 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.

8. 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.

9. The petitioner is not entitled to bail, looking at the previous criminal history. However, the petitioner's counsel had sought bail also on medical grounds. The State

did not dispute the critical medical condition of the petitioner. It has been argued that the petitioner is a severe diabetic patient with swelling on his left leg, which may result in its amputation, and he wants to get treatment at his efforts.

10. This Court affords a final opportunity to the petitioner to take medical treatment and also to course correct. Given this, the prevision criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail.

11. During the trial's pendency, if the petitioner repeats this offence or commits any offence under NDPS Act, Arms Act, or where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, then State should consider applying 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 continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.

12. 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.

13. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and on the medical grounds 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.

14. 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 Ilqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that in case the petitioners-accused fail to appear in Court, then such sureties are capable to produce the petitioners-accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

15. The furnishing of the personal bonds shall be deemed acceptance of the following

and all other stipulations, terms, and conditions of this bail order.

16. 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.

17. 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.

18. 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.

19. Within ten 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 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.

20. Given the nature of 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 10 days from today 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.

21. Within 10 days from today, the petitioner shall mention details of all assets, held either individually or jointly, including bank balances, fixed deposits, DEMAT Accounts, to the Investigator.

22. 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.

23. In case the petitioner finds the 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.
24. 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.
25. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.
26. 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.
27. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
28. This bail is subject to the petitioner joining investigation and fully cooperating with the investigating agencies. Failure to do so shall ipso facto result in its withdrawal.
29. *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 of.

(ANOOP CHITKARA)
JUDGE

18.01.2022
anju rani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No