

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

CRM-M-6328-2023

Date of Decision: 19.04.2023

GAURAV

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sachin Ohri, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J. (ORAL)

Prayer in the present petition, filed under Section 439 of the Code of Criminal Procedure, is for grant of regular bail to the petitioner in case FIR No.175 dated 27.09.2022, registered under Sections 21, 21(b), 22, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Dinanagar, District Gurdaspur.

2. Pursuant to the advance copy of petition having been served upon learned State counsel, Mr. Harjinder S. Sidhu, Assistant Advocate General, Punjab, had appeared and filed status report by way of an affidavit of Mr. Aditya Warriar, IPS, Assistant Superintendent of Police, Dinanagr, District Gurdaspur, on behalf of respondent-State of Punjab, which is already on record.

3. Custody certificate dated 18.04.2023 of the petitioner filed by learned State counsel in Court today is taken on record, subject to all just exceptions.

4. As per the prosecution case, on 27.09.2022, in the area of Ghrota Bypass, co-accused Pooja (mother of the petitioner) was apprehended with *12 grams of heroin* and *Rs.59,000/-*, which was termed as '*drugs money*'. Accordingly, the above said case FIR was registered.
5. As per the status report, the present petitioner was nominated as an accused on the basis of disclosure statement made by co-accused Pooja, vide G.D.No.28 dated 29.09.2022.
6. The petitioner applied for regular bail before the learned Additional Sessions Judge, Gurdaspur; however, the same was dismissed vide order dated 17.01.2023. Accordingly, the present petition has been filed by the petitioner, seeking regular bail.
7. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. It is submitted that even the alleged recovery from co-accused Pooja, has been foisted upon her and the petitioner has been falsely implicated on the basis of alleged disclosure statement of above-said Pooja, who is none other but the mother of the petitioner. Leaned counsel further submits that the petitioner has no concern with the alleged crime and earlier the petitioner had filed a petition (***CRM-M-52220-2022***) before this Court, seeking anticipatory bail; however, the same was withdrawn vide order dated ***12.01.2023*** as he was ready and willing to surrender before the trial Court. It is submitted that thereafter, the petitioner surrendered before the Court of Additional Sessions Judge, Gurdaspur on 16.01.2023. It is further submitted that co-accused Pooja, has already been granted bail by this Court vide order dated 30.11.2022,

whereby, the following observations were made :-

*Drawing support from the observations made by the Hon'ble Apex Court in **State of West Bengal vs Rakesh Singh @ Rakesh Kumar Singh 2022(10) Scale 483** and upon consideration of the facts and circumstances of the instant case, I am of the considered view that the case of the present petitioner is on a slightly better footing inasmuch as that there were 53 other criminal cases against above referred Rakesh Singh, although there was no case under the NDPS Act, whereas, in the case in hand, there are only two other criminal cases against the present petitioner other than the present case FIR No.175 dated 27.09.2022. As per custody certificate, there is no other case under the NDPS Act against the petitioner nor any such plea has been raised by the State counsel during the course of hearing of the present petition. Even on specific asking of the Court, no such instance/circumstance has been pointed out by the State counsel, which has come up during investigation carried out so far, so as to indicate any degree of continuity and regularity in drug dealing so as to enable this Court to prima facie form an opinion that the petitioner is trafficking in drugs; so as to attract the provisions of Section 27-A of the NDPS Act and in turn, also attract the bar under Section 37 of the Act.*

Prima facie, at this stage, there is nothing to show that the petitioner has previously violated any of the provisions of NDPS Act. The other two criminal cases are relating to the offences under the Indian Penal code, wherein the petitioner is on bail. Thus, at this stage, the applicability of Section 27-A of the NDPS Act, in the present case is a questionable and a debatable issue.

Even otherwise, while dealing with Section 37 of the Act, the Court is not called upon to record a finding of "not guilty" and it is only required to say that there are

reasonable grounds to believe that the accused is not guilty of the offence. In the facts of the present case, on an assessment of material on record, I am of the prima facie view at this stage that the petitioner may not have committed the offence under Section 27-A of the NDPS Act. Further, considering the fact that the petitioner is not involved in any other case under the NDPS Act, there is nothing on record to suggest that she is likely to commit an offence under the NDPS Act, while on bail.

So far as the apprehension shown by learned State counsel that the witnesses could be influenced, suffice it to state that all the witnesses in this case are official witnesses i.e. the police officials regarding the alleged possession and recovery of the contraband from the petitioner. Accordingly, the apprehension of the State counsel that the petitioner might influence the witnesses, is misplaced.

Keeping in view the afore-mentioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to her furnishing heavy bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned.”

8. Learned counsel for the petitioner further submits that the allegedly recovered contraband from the petitioner i.e. 12 grams of heroin, falls under the non-commercial quantity and the rigors of Section 37 of the NDPS Act, are not attracted. However, since the FIR has been registered also under Section 27-A of the NDPS Act; accordingly, the rigors of Section 37 of the NDPS Act, would be attracted. Learned counsel further submits that the petitioner has been in custody for more than three months; the investigation has been completed and the challan against the petitioner and the co-accused stands presented in the Court on 28.02.2023; charges have been framed on 13.03.2023 and the trial is likely to take some time to

conclude. Learned counsel further submits that the petitioner is ready and willing to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly, prayer for grant of regular bail is made.

9. Per contra, learned State counsel has opposed the plea of the petitioner for grant of regular bail on the ground of seriousness of offence and also that three more cases are there against the petitioner, out of which, one is under the NDPS Act. However, it is not disputed that the petitioner has been in custody for 03 months and 02 days (as on 18.04.2023); challan has already been presented and even the charges have been framed. It is also not disputed that co-accused Pooja, has already been granted the concession of regular bail vide order dated 30.11.2022 passed in **CRM-M-50808-2022** by this Court. It is further not disputed that the petitioner is already on bail in case FIR No.18 dated 16.02.2021, registered under Section 21 and 29 of the NDPS Act at Police Station Sadar Pathankot and in case FIR No.105 dated 09.06.2021, registered under Sections 120-B, 198, 199, 200 and 420, at Police Station Dina Nagar.

10. I have heard learned counsel for the parties; perused the paper book; status report filed as well as the custody certificate of the petitioner handed over by learned State counsel, in Court today.

11. In this case, the petitioner had surrendered before the Court of Additional Sessions Judge, Gurdaspur. The petitioner has been in custody for more than three months; challan has already been presented and charges have been framed and the trial is likely to take some time to conclude. Further, co-accused Pooja @ Pooja Rani, has already been granted the concession of regular bail, wherein, the applicability of Section 27-A of the

NDPS Act, is stated to be questionable and debatable issue. Still further, the alleged contraband i.e. *12 grams heroin*, is non-commercial in nature.

12. Keeping in view the afore-mentioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case and any change in the address shall also be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity, during the pendency of the trial.

13. The petitioner shall appear before the police station concerned on alternate Monday of every month till the conclusion of the trial and on each such appearance, the petitioner shall file an affidavit stating therein that he is not involved in any other case other than the case(s) mentioned in this petition.

14. In addition, the petitioner (or any one on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of the absence of the petitioner from trial without sufficient cause.

15. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded

above are only for consideration of the prayer for bail at this stage.

16. The petition is disposed of accordingly.

April 19, 2023
Himani/gurpreet

(HARSH BUNGER)
JUDGE

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