

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-12184-2023 (O&M)

Reserved on: 13.09.2023

Pronounced on: 18.09.2023

Nishan Singh son of Malook Singh

... Petitioner(s)

Versus

State of Punjab

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. P.S. Sekhon, Advocate
for the petitioner(s).

Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
99	6.5.2022	Sadar Ferozepur, District Ferozepur	15 and 29 NDPS Act

1. The petitioner incarcerated for violating the above-mentioned provisions 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 bail.
2. In paragraph Nos.10 and 11 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR / Crl. Comp. No.	Date	Offences	Police Station
1.	54	22.5.2019	15/25 NDPS Act	Hathur
2.	115	16.5.2012	15 NDPS Act	Mehatpur
3.	161	29.11.2015	15 NDPS Act	Kot Isse Khan
4.	180	21.3.2008	15 NDPS Act	Baghapurana
5.	Crl.Complaint	12.2.2015	9 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962	--
6.	112	9.9.2003	323, 324 IPC	Kot Isse Khan
7.	102	21.3.2008	224/225 IPC	Baghapurana
8.	53	5.10.2003	224/225 IPC	City South, Moga
9.	Crl.Complaint	2.2.2016	9 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962	--

3. The petitioner contends 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 the quantity of contraband involved in the case falls into the commercial category, and given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

5. In *Paramjeet Singh v. State of Punjab*, 2022:PHHC:003983 [Para 8], 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history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included.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.”

6. A perusal of the petition does not refer to any averment based on which this Court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior.

7. Case of the prosecution is that on 6.5.2022, they received a secret information that Nishan Singh son of Anokh Singh and Kuldeep Singh son of Inder Singh, who deal in selling of intoxicants, are coming in truck bearing number HR-65–4300 from Rajasthan, carrying a huge quantity of poppy husk. On this, the police intercepted the truck and recovered 10 quintals of poppy husk. After arrest of Nishan Singh son of Anokh Singh and Kuldeep Singh, the police interrogated them and came to know about the involvement of the present petitioner - Nishan Singh son of Malook Singh, Surjit Singh and one Rajat Sharma. It also transpired that the petitioner was instrumental in the said deal and the money was paid by Rajat Sharma through two bank transactions of Rs.30,000/- and Rs.19,000/-, on the asking of the petitioner.

8. Petitioner seeks bail by relying upon the statement of Rajat Sharma, (Annexure P2), in which he had stated that on 28th April, 2022, one person asked him to transfer Rs.49,000/- to main accused Nishan Singh son of Anokh Singh, on the pretext that

brother of his friend was serious and admitted in hospital and as such, since money was required, he transferred the said money in the account of co-accused Nishan Singh son of Anokh Singh, on the asking of the petitioner. The petitioner submits that he was implicated in the present case on the basis of telephonic conversations, however, since the petitioner was already in jail, in other cases, there was no question of his having such telephonic conversation.

9. The stand of the petitioner that since he was in jail, there was no question of making phone call/whatsapp call, is based on the premises as if phones are not used in jails. In fact, this stand itself is correct because under section 52A of the Prisons Act, specific punishment is provided for usage of phones in the prisons to tackle the massive misuse of phones in prisons. However, there are so many instances of phones being misused in jails and such misuse of phones in prisons is well within the knowledge of the State Governments. Thus, the ground of the petitioner that he could not have made the phone calls or whatsapp call from the prison, is again without merit.

10. The quantity involved, in the present case, undoubtedly, is not only commercial, but it is 20 times more than commercial. Thus, rigours of Section 37 NDPS would apply and burden shifts on the accused, provided the prosecution has discharged its initial burden. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under Section 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. Thus, the petitioner has failed to make a case for bail at this stage.

11. In addition to that, as per paragraphs 10 and 11 of the petition itself, the petitioner has a massive criminal history. Apart from other criminal cases, he was even convicted in one case under the NDPS Act in 2015 and he is on bail on two other cases under the NDPS Act. It shows that in case the petitioner is released on bail, he will again indulge in poppy husk or intoxicant substances. Moreover, his pre-trial custody, in the present case, is only one year and three months and as such, he is not entitled to bail on pre-trial custody.

12. As per paragraph 3 of the status report filed by way of affidavit of DySP concerned, confessional statements of co-accused were recorded, who admitted that they used to bring the poppy husk through Surjit Singh and the present petitioner Nishan Singh son of Malook Singh. They have further stated that the petitioner was in touch with the co-accused through mobile phone and it was on the telephonic instructions of the present petitioner, co-accused Rajat Sharma had transferred

Rs.49,000/- in the account of other co-accused. Thus, the petitioner is the main link in the chain of supply of poppy husk.

13. A perusal of the bail petition and the documents attached, *prima facie* points towards the petitioner’s involvement and does not make out a case for bail. Any further discussions are likely to prejudice the petitioner; this court refrains from doing so.

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.

The petition is dismissed. All pending applications, if any, stand closed. However, considering the petitioner's right to speedy trial coupled with the pre-trial incarceration, this court requests the concerned trial court to make all endeavours to conclude the trial by Dec 31, 2023, of which the prosecution evidence be completed by Oct 31, 2023, and latest by Nov 30, 2023, and the remaining time to provide an opportunity to the accused to lead defence evidence, if so desired, and to conclude its hearing. To meet the deadline, an endeavour be made to speed up the process for service and to pass the necessary directions in this regard. It is clarified that if expediting this trial disturbs the docket of the concerned court, then a balance be struck, and if, on this account, any delay happens, then an extension can be sought by mentioning such reasons. It is clarified that this order speeding up the trial is subject to the condition that neither the petitioner shall seek any adjournment nor try to use any tactics to delay the trial. If they do so, this order of expediting the trial shall stand automatically recalled by resorting to Section 362, read with Section 482 Code of Criminal Procedure, 1973, without any further reference to this court. If any of the accused is on bail and fail(s) to attend the trial without any sufficient cause, then they be dealt with strictly but in accordance with law. It is clarified that if the trial is not concluded by the date mentioned above, and if the delay is not attributable to the petitioner, then the petitioner may file an application for bail before the trial court, which shall decide it expeditiously and consider the bail on the grounds of pre-trial custody, and all the previous orders of dismissal passed by the trial court or High Court shall not come in the way.

(ANOOP CHITKARA)
JUDGE

September 18, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No