

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CRM-M-20610-2023
Date of Decision: 01.09.2023

Manpreet Singh @ Mapi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikasdeep Singh, Advocate for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
239	22.08.2021	Sultanpur Lodhi, District Kapurthala	21 (c) of NDPS Act, 25 Arms Act and Section 411 IPC added later on

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, on the allegations of dealing in 255 grams of heroin, has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 18 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offences	Police Station
1.	234	27.07.2020	324, 307, 506, 148, 149 IPC	Sultanpur Lodhi, Kapurthala
2.	9	29.01.2020	61 of Excise Act	Talwandi Chaudhrian, Kapurthala
3.	102	01.07.2015	379-B, 323, 506, 34 IPC	Sultanpur Lodhi, Kapurthala
4.	48	29.06.2016	379-B, 323, 506, 34 IPC	Talwandi Chaudhrian, Kapurthala
5.	6	29.01.2016	457, 380, 427 IPC	Talwandi Chaudhrian, Kapurthala
6.	65	10.06.2017	399, 402 IPC and 25 of Arms Act	Talwandi Chaudhrian, Kapurthala
7.	53	30.03.2017	379-B, 482, 411 IPC	Sultanpur Lodhi, Kapurthala
8.	103	06.09.2018	22 of NDPS Act	Talwandi Chaudhrian, Kapurthala
9.	36	10.06.2016	457, 380 IPC	Talwandi Chaudhrian, Kapurthala
10.	70	21.05.2016	457, 380 IPC	Sultanpur Lodhi, Kapurthala
11.	50	11.05.2017	323, 324, 341, 336, 148, 149 IPC and 25, 27, 59-A of Arms Act	Talwandi Chaudhrian, Kapurthala

12.	97	24.05.2019	61 of Excise Act	Sultanpur Lodhi, Kapurthala
13.	105	01.06.2020	188 IPC	Lohian
14.	252	23.08.2022	52-A Prisons Act	Kotwali Kapurthala
15.	311	26.09.2022	52-A Prisons Act	Kotwali Kapurthala

3. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. While opposing 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. Apart from this, the allegations

7. On 22.08.2021, the police party was patrolling in Kapurthala. At that time, they noticed a male, who came on a motor bike and when the said bike driver saw the police, then he threw one polythene bag from the right side of his trouser and also tried to flee. However, in the said process his bike slipped and fell on the road. This read suspicion in the mind of the police team and ASI got suspicious that this person was carrying a head thrown some contraband. After this, ASI gave an option to the petitioner to get his search conducted before a Gazetted Officer or a Judicial Magistrate which was his legal right. However, the petitioner expressed his full faith in the ASI and subsequently the police party conducted his search and found one country made pistol and two live cartridges. When the police party picked up the polythene bag which was thrown by

petitioner-Manpreet Singh then the police recovered heroin from it which weighed 255 grams. Thush, prima facie the allegations point towards the recovery of not only of commercial quantity of heroin but also of a country made pistol from petitioner’s body and also the heroin which prima facie is connected to the petitioner. In addition to that the trial has already started and as per the State, out of 12 witnesses 01 witness has been examined. State assures that they will not delay the trial at their end.

8. The weight of alleged heroin is 255 grams and the quantity greater than 250 grams would fall in commercial quantity in the following terms:

Substance Name	Heroin/ Chitta/ Smack
Quantity detained	255 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	102.00%

Specified as small & Commercial in S.2(viia) & 2(xxiia) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	56
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin
Other non-proprietary name	*****
Chemical Name	Diacetylmorphine
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxi) NDPS Act, 1985	
Notification No	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	11/14/1985
Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in

	which one gram of substance, if solid, or one mililitre of substance, if liquid, is contained in every one hundred mililitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.
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9. Thus, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

10. The petition states that the accused is entitled to bail because of the non-examination of independent witnesses. However, this plea would gather force only when the accused establishes after cross-examination that the police deliberately did not associate any independent witness even when they could have been made available, and in the facts and circumstances peculiar to this case, the argument does not satisfy the requirements of section 37 of NDPS Act. In *State of Punjab v Baldev Singh*, (1999) 6 SCC 172, Constitutional bench of Hon’ble Supreme Court holds,

[14]. The provisions of Sections 100 and 165 Cr.P.C. are not inconsistent with the provisions of the NDPS Act and are applicable for effecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure comes across a person being in possession of the narcotic drugs or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from the stage in accordance with the provisions of the NDPS Act. In *Balbir Singh's* case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of Cr.P.C. in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 *per se* does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view.

11. The petition states that the quantity of substance allegedly recovered is marginally above the commercial quantity. This submission is more compassionate than legal. Once the quantity is greater than commercial, it is immaterial for the purpose of bail. Once it is in statute, Judges have no latitude. Given the legislative mandate under section 37 of the NDPS Act, an accused is not entitled to bail if the quantity is marginally above the commercial quantity.

12. The stand that the accused is in custody for sufficient time is also not legal grounds to overcome the rigors of S. 37 of the NDPS Act at this stage.

13. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under S. 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.

14. 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.

15. 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

01.09.2023
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.