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

**CRM-M-27098-2023 (O&M)
Date of decision : 17.10.2023**

Jiwan Singh @ Thikra

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vikas Bishnoi Godara, Advocate,
for the petitioner.

Mr. Ashok S. Chaudhry, Addl.A.G., Haryana.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the petitioner in FIR No.117 dated 04.05.2023, under Section 15-B of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (*for short 'the NDPS Act'*), registered at Police Station Sadar Ratia, District Fatehabad.

2. Petitioner was nominated as an accused in the present case on the basis of disclosure made by co-accused Sandeep Singh @ DC and Jagtar Singh @ Tari, from whom, recovery of 20 kgs. of poppy husk was effected.

3. Learned counsel contends that in terms of the order dated 29.05.2023, petitioner has already joined investigation and his custodial interrogation is not required. Further contends that petitioner has been

falsely implicated in the present case on the basis of disclosure made by the co-accused. No recovery was effected from the petitioner.

4. Learned State counsel, while opposing the prayer, submitted that though, petitioner has joined the investigation, but he is not cooperating. Further contended that petitioner has been involved in 08 more cases, out of which, 07 are under the NDPS Act.

5. Heard learned counsel for the parties and perused the paper-book.

6. On 18.04.2023, the Coordinate Bench granted interim pre-arrest bail to the petitioner and relevant part of the order reads as under:-

<i>“FIR No.</i>	<i>Dated</i>	<i>Police Station</i>	<i>Sections</i>
<i>117</i>	<i>4.5.2023</i>	<i>Sadar Ratia, District Fatehabad</i>	<i>15-B NDPS Act</i>

1. The petitioner, apprehending arrest 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 selling 20 kgs of poppy straw to the two accused, from whose possession the police recovered it and who during their interrogation implicated the present petitioner, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 16 of the bail application, the accused declares the following criminal antecedents:

<i>Sr. No.</i>	<i>FIR No.</i>	<i>Date</i>	<i>Offences</i>	<i>Police Station</i>
<i>1.</i>	<i>245</i>	<i>7.6.2009</i>	<i>61.1.14 Excise Act</i>	<i>Ratia</i>
<i>2.</i>	<i>406</i>	<i>15.7.2016</i>	<i>15.27A.61.85 NDPS Act and 147, 149, 186, 224, 225, 332, 353 IPC</i>	<i>Ratia</i>
<i>3.</i>	<i>288</i>	<i>14.12.2021</i>	<i>15.61.85 NDPS Act</i>	<i>Ratia</i>
<i>4.</i>	<i>222</i>	<i>8.8.2022</i>	<i>15/29-61-85 NDPS Act</i>	<i>Ratia</i>

3. *Petitioner's counsel prays for bail by imposing any stringent conditions. Counsel for the petitioner contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.*

4. *While opposing the bail, including the interim protection, learned counsel representing the State contends that given the criminal past, the accused is likely to indulge in crime once released on bail.*

REASONING:

5. *In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,*

[10]. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

6. *In Paramjeet Singh v. State of Punjab, 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.

7. *Given the accused's role and other factors peculiar to this case, it may be appropriate to afford the petitioner a final opportunity to course-correct. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage. Furthermore, a prima facie perusal of paragraph 6 of the bail petition reveals sufficient grounds for granting interim bail, **till the next date.***

8. Thus, the quantity allegedly involved in this case is not commercial. Given this, the rigours of Section 37 of the NDPS Act do not apply in the present case.

9. 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 Section 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.

10. 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.

11. In *Gurbaksh Singh Sibbia v State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a *prima facie* case against him, or despite the existence of a *prima facie* case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4

SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

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 elaborate 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. In *Sumit Mehta v. State of N.C.T. of Delhi*, (2013) 15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

13. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for interim bail, till the next date, 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. In ***Mahidul Sheikh v. State of Haryana***, Neutral Citation No: 2022:PHHC:003277, [Para 53], [Law Finder Doc Id # 1933969], this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the “Court” and the “Arresting Officer” should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

15. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/-); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned investigator/SHO. Before accepting the surety, the concerned officer must satisfy that if the accused fail to appear in court, then such surety can produce such accused before the court.

OR

(b) Petitioner to hand over to the concerned investigator/SHO a fixed deposit for Rs. Ten Thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favour of the 'Chief Judicial Magistrate' of the concerned district. The fixed deposit may be made from any of the banks where the stake of the State is more than 50% or any of the well-established and stable private sector banks. The fixed deposit need not necessarily be made from the petitioner's account.

(c). In case of the launching of the prosecution, the said fixed deposit be forwarded to the concerned court along with the police report/challan under 173 CrPC.

(d). Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under Section 437-A CrPC, 1973, and at that stage, subject to the proceedings under Section 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(e). It shall be the discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(f). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that numbers which is linked with the AADHAR, 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.

(g). The petitioner is 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 declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and also of this bail order.

16. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as might be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM and shall be

let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

17. 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.

18. Within fifteen days from today, 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. This condition shall continue till the completion of the trial or closure of case, whatever is earlier.

19. 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 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, provided otherwise permissible in the concerned rules.

20. 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 continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.

21. 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.

22. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, 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.

23. *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.*

24. *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.*

25. ***The petitioner is directed to join investigation. Since the State is opposing the bail, the petitioner shall join investigation as and when called upon to do so and shall also remain present in the concerned police station at 9 AM, one day prior to the next date of hearing. Failure to appear ipso facto shall result in vacation of interim protection and dismissal of this petition***

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 behaviour. **If the petitioner again indulges in drugs, then while considering grant of bail in such cases, the concerned Courts may keep it as a factor that this Court had granted a final opportunity to the petitioner to mend his ways.***

28. *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.*

List on 10.07.2023.

Status report/response/instructions be filed in the meantime.”

7. It is also not in dispute that above order has been extended from time to time and continuing till date.

8. It transpires that petitioner is involved in 08 other criminal cases, including 07 under the NDPS Act. Although he has been acquitted in 04 cases, but facing trial in 03 cases and convicted in 01

case. In the present case, allegations are that petitioner indulged in the sale and purchase of poppy husk. In such a scenario, to find out the truth, custodial interrogation of the petitioner would be the only way out.

9. Therefore, keeping in view the antecedents of the petitioner as well as rigors of Section 37 of the NDPS Act, this Court is not inclined to accept the prayer.

10. As a result thereof, there is no option except to dismiss the petition.

11. Ordered accordingly.

12. Needless to say that interim protection granted to the petitioner vide order dated 29.05.2023 and extended subsequently, shall come to an end, automatically.

13. Also clarified that observations made above shall not be construed as an expression of opinion on merits of the controversy, in any manner.

14. Pending application(s), if any, shall also stand disposed off.

17.10.2023

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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :

Yes

No

Whether Reportable :

Yes

No