

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

CRM-M-36696-2022 (O&M)

Date of Decision: 31.07.2023

MUKHTIAR SINGH ALIAS MUKHTAR
ALIAS KISHAN

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Dr. Anmol Rattan Sidhu, Senior Advocate
assisted by Mr. Pranshul Dhull, Advocate
for the petitioner.

Mr. M.S. Tiwana, A.A.G., Punjab.

HARSH BUNGER, J.

Petitioner (Mukhtiar Singh alias Mukhtar alias Kishan) has filed this petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.82 dated 07.06.2022, under Sections 15, 18 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act, 1985') (Section 29 of the NDPS Act, 1985, added subsequently), registered at Police Station Khanna City – 2, District Khanna, Ludhiana.

2. Reply by way of an affidavit of Sh. Jashandeep Singh Gill, PPS, Deputy Superintendent of Police, Detective Khanna Additional Charge DSP Khanna, District Ludhiana (Punjab), on behalf of respondent-State of Punjab has been filed, which is already on record.

3. Custody certificate dated 30.05.2023 of the petitioner has been filed by learned State counsel, in the Court, which has been taken on record vide order dated 31.05.2023.

4. Briefly, the afore-said case FIR was registered on the basis of *ruqa* sent by one Vinod Kumar, Incharge, C.I.A. Staff, Khanna; wherein, it was stated that on 07.06.2022, he along with other police officials was present at Delhi-Ludhiana Highway, on a government vehicle bearing registration No.PB-10-GK-6173 (make 'Balero'), in front of Pristine Mall, G.T. Road, Khanna, in relation to patrolling/search of suspicious/bad elements and were conducting checking of vehicles coming from the side of Mandi Gobindgarh. At about 2:00 p.m., one truck bearing registration No.PB-05-T-9195 came from the side of Mandi Gobindgarh, which was stopped by the police party on the basis of suspicion and two Sikh men were present therein. Upon enquiry, the driver disclosed his name as Tirath Singh son of Joginder Singh resident of Begepur, Police Station Kacha Pacca, District Tarn Taran and the other person disclosed his name as Balbir Singh son of Pishora Singh resident of Village Lohka, Police Station Patti, District Tarn Taran. They were made aware of their legal rights regarding search etc.; whereupon, both the afore-said persons namely, Tirath Singh and Balbir Singh, jointly stated that they wanted to get their search as well as the search of their truck conducted in the presence of a higher official. Accordingly, one Rajan Parminder Singh, PPS, DSP (SD), Khanna, was requested to reach at the spot after informing him about the circumstances. Upon arrival of said Rajan Parminder Singh, PPS, DSP (SD), Khanna, on the spot, he introduced himself to the apprehended persons namely Tirath Singh and Balbir Singh and after following the procedure, made them aware of their legal rights of getting their search as well as the search of their truck conducted since they were suspicion of intoxicating substance therein; whereupon, the said persons jointly stated that they had faith in the said officer (DSP) and said that he can conduct

their search as well as the search of their truck (PB-05-T-9195). After following the procedure, the search of the truck was conducted and one heavy black coloured polythene bag was recovered from the cabin above the driver side and after opening it, the same was sniffed and *opium* was found therein. The recovered *opium* was weighed with the electronic scale and the same was found to be 3 kgs. along with polythene bag. Thereafter, upon search on truck's terrace, one white coloured heavy plastic gunny bag was recovered, which was sealed. The said gunny bag was checked from which *poppy husk* was recovered. On weighing the said gunny bag containing *poppy husk*, the same was found to be 20 kgs. Accordingly, the *ruqa* was sent to the police station for registration of the FIR, which was registered and the afore-said persons namely, Tirath Singh and Balbir Singh, were arrested.

5. As per the status report, after the arrest of afore-said Tirath Singh and Balbir Singh, they were interrogated; wherein accused Balbir Singh made a disclosure statement on 10.06.2022 to the effect that out of the alleged recovery of 3 kgs. of *opium*, he was supposed to hand over 2 kgs. of *opium* to Mukhtiar Singh alias Mukhtar alias Kishan (petitioner), who has a shop by the name of 'Shera Telecom'. Accordingly, the petitioner was nominated as an accused and offence under Section 29 of the NDPS Act, 1985, was added and he was arrested on 10.06.2022. It is further mentioned in the status report that during investigation, it was found that a transaction of sum of Rs.25,000/- had taken place on 02.06.2022 from the account of 'Shera Telecom' to the account of accused Balbir Singh and on the basis of said transaction, the involvement of the petitioner in the instant FIR was apparent.

6. The petitioner had applied for regular bail before the learned Judge, Special Court, Ludhiana; however, the same was dismissed vide order dated 20.07.2022. Accordingly, the present petition has been filed before this Court.

7. Learned counsel for the petitioner submits that the petitioner has neither been named in the FIR nor any role has been assigned to him; however, he has been nominated as an accused on the basis of an alleged disclosure statement made by co-accused Balbir Singh; wherein, he has stated that out of 3 kgs. *opium* recovered from him (Balbir Singh), he was supposed to hand over 2 kgs. of *opium* to the present petitioner, who is stated to be having a shop by the name of 'Shera Telecom'. It is submitted that no recovery of any intoxicant substance was effected from the possession of the petitioner as he was picked up from his house on 10.06.2022 i.e. after a gap of about three days of the alleged occurrence. It is submitted that the offending vehicle does not belong to the petitioner and no offence is made out against him. It is further submitted that the petitioner has no concern with the shop namely "Shera Telecom" as the same is owned by one Rashpal Singh. It is next submitted that the alleged disclosure statement of co-accused Balbir Singh, is not admissible in the eyes of law. Learned senior counsel for the petitioner also submits that the petitioner has been in custody since 10.06.2022; investigation of this case is complete; challan stands presented and out of total 16 witnesses, no one has been examined so far and the trial is likely to take some time. Learned senior counsel further submits that the petitioner is ready 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.

8. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. He further submits that the petitioner used to transfer the money in the account of co-accused for the purpose of contraband and there is sufficient material to show the complicity of the petitioner in the crime. It is further submitted by learned State counsel that in the instant case, the recovery of 20 kgs. of *poppy husk* and 03 kgs. of *opium*, fall under the category of commercial quantity and hence, the rigors of Section 37 of the NDPS Act, 1985 are attracted. It is also submitted that the petitioner does not have clean antecedents as he is involved in another case FIR No.78 dated 30.06.2020, under Sections 18, 21 and 29 of the NDPS Act, 1985, registered at Police Station STF, District Mohali. It is further submitted that in case, the petitioner is extended the benefit of regular bail then there is every likelihood that he may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, it is urged that the petitioner do not deserve the concession of regular bail and thus the instant petition may be dismissed.

9. So far as the involvement of the petitioner in another case FIR No.78 dated 30.06.2020, under Sections 18, 21 and 29 of the NDPS Act, 1985, is concerned, learned counsel for the petitioner submits that the petitioner has already been granted bail vide order dated **08.03.2022** passed in **CRM-M-20549-2021** (Annexure P-4).

9. I have heard learned counsel for the parties and perused the paper book; custody certificate of the petitioner as well as status report filed by learned State counsel, which are already on record.

10. Concededly, the huge quantity of contraband (20 kgs. of *poppy husk* and 03 kgs. of *opium*) has been seized in the instant case, which falls

under the category of “Commercial Quantity” and thus the rigors of Section 37 of NDPS Act are attracted. Section 37 of the NDPS Act, 1985, is reproduced hereunder:-

“[37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.].”

11. In ***Union of India v. Rattan Mallik @ Habul, 2009 (1) RCR (Criminal) 938***, the Apex Court had observed that when an accused is arrested in a case under Narcotic Drugs and Psychotropic Substances Act, grant of bail to such accused is not only subject to limitations imposed under Section 439 of the Criminal Procedure Code, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act and the accused

will be granted bail only if the Court is satisfied that there is reasonable ground for believing that accused was not guilty of offence and he was not likely to commit an offence under Narcotic Drugs and Psychotropic Substances Act while on bail. In that way, bail could be granted, if mandatory provisions of Section 37 of Narcotic Drugs and Psychotropic Substances Act are satisfied.

12. Furthermore, in *State of Kerala etc. v. Rajesh etc., 2020(1) RCR (Criminal) 818*, Hon'ble the Apex Court had observed as under :-

19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In Union of India v. Ram Samujh and Ors. 1999(4) RCR (Criminal) 93 : 1999(9) SCC 429, it has been elaborated as under:-

*"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v.***

Chief Secy., Union Territory of Goa [1989(2) RCR (Criminal) 505 : (1990) 1 SCC 95)] as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany

trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

20. *The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates".*

13. Although, learned counsel for the petitioner contends that in the other case FIR No.78 dated 30.06.2020, under Sections 18, 21 and 29 of the NDPS Act, 1985, registered at Police Station STF, District Mohali, the petitioner has been granted bail vide order dated **08.03.2022** passed in **CRM-M-20549-2021** (Annexure P-4); however, a perusal of the same would reveal that in the said case also, the petitioner was booked in respect of commercial quantity of 280 gms. *hereoin*, allegedly recovered from him and the bail was granted to him considering the custody in that particular case, which was more than 1½ years. However, it is also apparent that the bail in the said case was granted on **08.03.2022** and in the instant case, the FIR has been registered on **07.06.2022**.

14. Keeping in view the facts and circumstances of this case, especially the petitioner is also involved in other case FIR No.78 dated

30.06.2020 and the recovery in the present case is 20 kgs. of *poppy husk* and 03 kgs. of *opium*, which is commercial, there is nothing on record so as to enable this Court to record a *prima facie* satisfaction as required under Section 37 of the NDPS Act; moreover, when the petitioner is involved in another case under the NDPS Act. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly. Furthermore, there is every possibility that the petitioner may take path of crime again, in case, he is enlarged on bail.

15. It is a matter of common knowledge that drug trafficking as well as drug consumption in the State of Punjab is rising, which is ruining the lives of many of the young people. The drug peddlers, for their own monetary gains, are misleading the youth towards drugs consumption, which is not only affecting these young people but is also affecting their families. The drug menace and the drugs peddlers are required to be dealt with stern and firm hands.

16. Thus in my considered view, the gravity and seriousness of allegations with likelihood of petitioner tampering with the prosecution evidence and even absconding being there, no ground for grant of regular bail to the petitioner is made out. Accordingly, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Mukhtiar Singh alias Mukhtar alias Kishan) in case FIR No.82 dated 07.06.2022 (Annexure P-1) under Sections 15, 18, 25 of the NDPS Act, 1985 (Section 29 of the NDPS Act, 1985, added subsequently), registered at Police Station Khanna City – 2, District Khanna, Ludhiana; is dismissed.

17. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

18. Pending application/s, if any, shall also stand disposed of.

July 31st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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