

CRM-M-55960-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55960-2022
Date of order: 08.02.2023

Jai Bhagwan

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Gulia, Advocate
for the petitioner(s).

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J. (Oral)

FIR No.	Dated	Police Station	Sections
335	25.8.2022	Matlauda, District Panipat	20 NDPS Act

1. The petitioner under arrest for violating the provisions mentioned above 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. The petitioner claims that he is entitled to default bail under section 167 CrPC because, despite the statutory period of 180 days granted to file the charge sheet, the State launched the prosecution without placing the forensic science laboratory report on record.
2. Petitioner's counsel prays for bail by imposing any stringent conditions. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case *prima facie* falls in the commercial category.

REASONING:

3. The substance of section 167(II) CrPC concerning the commercial quantity of contraband mentioned under NDPS is that the Magistrate shall not authorize the detention of such person for a total period exceeding 180 days, even if the investigation is still pending.

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4. In Inderjeet Singh alias Laddi v. State of Punjab, 2014(3) RCR(Cri) 953, a division bench of this court holds,

[66] (viii) It is suggested that the State authorities should get the drugs in respect of which there is a contravention and that are recovered examined by the Chemical Analysts at the earliest and a report provided to the offender at the earliest so that the position can be ascertained as to whether the alleged offender was in possession of permissible quantity of the drug or otherwise. In case there is delay this would entitle the offender to at least interim bail till the report is finally received.

5. In Mohd. Abras & ors v. State of NCT of Delhi, SLP (Cri) Bo. 8718 of 2021, decided on 13-12-2021, a three-judge bench of Hon'ble Supreme Court holds,

"The relief sought by the petitioner in this petition is that he is entitled for default bail as the complete and final challan has not been filed within 180 days and the final report was not accompanied with an FSL Report.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioner has suffered incarceration for a period of more than 1 year and 4 months, we are inclined to grant interim bail to the petitioner for a period of three months from today subject to the terms and conditions to be imposed by the trial court."

6. The quantity involved is *prima facie* commercial. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, applying the ratio of the judicial precedents cited above, the petition is allowed to the extent that the petitioner shall be released on interim bail till the date FSL is not filed, 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.

7. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, 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.

8. 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

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(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b) Petitioner to hand over to the concerned court 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 favor of the 'Chief Judicial Magistrate' of the concerned district. Said 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). 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 S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). It shall be the total discretion of the petitioner to choose between surety bond and fixed deposit. 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.

(e). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that number 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.

(f). 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.

9. 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.

10. Within fifteen days of release from prison, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned above. 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, call logs nor format the phone without permission of the

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concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whichever is earlier.

11. 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 release from prison 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.

12. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the society. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

13. 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.

14. 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.

15. 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.

16. 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

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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.

17. 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.

18. It shall be permissible for the petitioner to apply for regular bail under section 439 CrPC, either before Special Court or this Court, and the said application shall be heard on its own merits.

19. **The petitioner shall surrender in prison from where he was released, within a week after being communicated about the filing of FSL report by 4-00 PM. After such communication, if petitioner does not surrender, this order will stand automatically recalled and bail shall stand eclipsed and consequent actions be taken.**

20. *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.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

February 08, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No