

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59051-2022
Reserved on: 08.05.2023
Pronounced on: 17.05.2023

Sukhchain Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Astik Vaid, Advocate for the petitioner.

Mr. Virat Rana, AAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0085	19.06.2022	Subhanpur, District Kapurthala	353, 186, 224, 332, 148, 149, 120-B IPC and 21(a)/22/61/85 of NPDS Act

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 possessing 171 grams of Alprozolam, which falls in commercial quantity and also 4 grams of heroin which falls in small quantity, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 14 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	1	06.08.2019	21/22/61/85 of NDPS Act	Subhanpur, District Kapurthala
2	42	2017	15/21/22/29/61/85 of NPDS Act	Subhanpur, District Kapurthala

3. Petitioner's counsel prays for bail by imposing any stringent conditions.The petitioner’s counsel argued that the petitioner has been nominated based on the disclosure statement of the main accused, and such statement is legally inadmissible.

4. While opposing the bail, the State's counsel contends that quantity involved is commercial and grant of bail encourages the drug peddlers.

REASONING:

5. 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.

6. The prosecution's case is being reproduced from paragraphs 1 to 13 of the reply affidavit filed by the concerned DySP, which reads as follows:

1. That present status report is being filed in the present petition with respect to status of investigation in present case.

2. That present FIR No.85 dated 19.06.2022, under Section 353,186,224, 332,148,149,120-B IPC and under Section 21(a)/22-61-85 of NDPS Act, Police Station Subhanpur, District Kapurthala, was registered on the statement of complainant ASI Lakhwinder Singh against Balwinder Singh@Binder, Inderjit Singh, Anjali, Amarjit Kaur, Sukhchain Singh i.e. petitioner, Satnam Singh, Paramjit Singh and Kulwant Kaur wherein he has stated that on 19.06.2022, he alongwith Senior Constable Navjit Singh No.1608, Constable Arshdeep Singh No.392, PHG Balbir Singh No.28249 were present for patrolling and checking of suspected persons.

on official vehicle No PB-09-X-6118 being driven by HC Sarwan Singh at Chowk Subhanpur, where he received a secret information that accused Balwinder Singh @ Binder son of Dalbir Singh, who is wanted in FIR No.63 dated 20.05.2022 under Section 21(a)/22/29-61-85 of NDPS Act, PS Subhanpur is present at his house and if a raid is conducted, he can be apprehended.

3. That complainant further stated that he alongwith other members of the police party conducted raid at the house of Balwinder Singh @ Binder at village Dogarwal, PS Subhanpur, District Kapurthala. He alongwith other members of the police party reached in front of the house of Balwinder Singh @Binder at about 10.00 PM on the pacca road and on seeing the police party, Balwinder Singh @ Binder tried to escape from the spot. He was nabbed by complainant with the help of other members of the police party and on being asked, he disclosed his name as Balwinder Singh @ Binder.

4. That complainant further stated that in the meanwhile, Inderjit Singh @ Sandy ie petitioner armed with Gandasa, Anjali, Amarjit Kaur came out from their houses raising lalkaras and started saying that the police is taking Binder and so the police party be taught a lesson. On this, all the accused started pushing the police party. In the meantime, one Verna car bearing No. PB-09-Q-0100 came which was being driven by Sukhchain Singh armed with Datar and his brother Satnam Singh armed with Sota, Paramjit Singh @ Pamma armed with baseball and Kulwant Kaur also came there raising lalkaras who were previously known to him all these persons are dealing in intoxicant substances.

5. That complainant further stated that Kulwant Kaur gave a bite blow with her teeth on the left arm of C. Arshdeep Singh and they saved Balwinder Singh @Binder from the hands of Arshdeep Singh forcibly Balwinder Singh @Binder ran away from the spot in the dark. On hearing raula, people gathered at the spot and the accused went in the dark leaving Verna car on the spot in open condition In the car on the front side near gear liver, one plastic envelope was lying in which some intoxicant material was suspected and as such intimation was sent to PS. Subhanpur to send the regular NGO to investigate the matter

6. That on the basis of the statement of ASI Lakhwinder Singh, a case was registered against the accused under Section 2(a)22/29/61/85 of NDPS Act in PS Subhanpur:

7 That thereafter SI Paramjit Singh alongwith LCT Rajwinder Kaur, PHG Jaswinder Singh came on a private car on the spot at village Dograwal, where he met ASI Lakhwinder Singh and ASI Lakhwinder Singh showed him plastic envelope lying in Verna car bearing registration No PB-09-Q- 0100. Before checking plastic envelope in the car, he tried to join some independent witness in the police party but due to the party faction, nobody joined in the police 5 party So SI Paramjit Singh in the presence of other official witnesses searched Verna car bearing No. PB-09-Q-0100 and from the front seat near gear liver, one plastic envelope was found and on its checking, intoxicant material and Heroin in a small envelope was recovered. The said intoxicant material was weighed which came out to be of 171 grams and Heroin came out to be 04 grams which were taken into police possession vide separate recovery memos. The car was also taken into police possession.

8. That all the accused namely Inderjit Singh @ Saindy, Paramjit Singh @ Pamma, Sukhchain Singh i.e. petitioner, Satnam Singh, Balwinder Singh @Binder, Amarjit Kaur, Kulwant Kaur and Anjali aforesaid have kept in their possession 171 grams of intoxicant material and 04 grams of Heroin and they have also interfered in the duty of the police and got released accused Balwinder Singh & Binder from the custody of the police and as such offence under Section 353,186,224,332,149,120-B IPC read with section 21(a)/22-61-85 of NDPS Act is made out against the accused Ruqa was sent to the police station for registration of the FIR against the accused.

9. That accused Balwant Kaur@ Kulwant Kaur was arrested from the spot on 18-06-2022 and she suffered disclosure statement and stated that her son Balwinder Singh@ Binder is proclaimed offender in other case and she further disclosed that on 19-06-2022 when her son Balwinder Singh @Binder was apprehended by Police then she alongwith Sukhchain Singh and Paramjit Singh reached at the spot in Verna Car then son of his brother-in-law Inderjit Singh her sister-in-law Amarjit Kaur and her daughter-in-law Anjali indulged in manhandling with police officials then she (Balwant Kaur) give bit blow on the arm of ASI Lakhwinder Singh and got released accused Balwinder Singh@ Binder who fled away from the spot.

10. That accused Balwant Kaur further disclosed that all her family members are indulged in illicit trade of narcotics, and she alongwith other co- accused were going to sell the intoxicant powder and heroin while she was being nabbed

11. That co-accused Amarjit Kaur was arrested in present case on 25-06- 2022 and she suffered disclosure statement in consonance with disclosure statement of co-accused Balwant Kaur admitting her guilt and connivance with other co-accused.

12 That the petitioner alongwith her co-accused have interfered in the duty of the police and got released accused Balwinder Singh @ Binder from the custody of the police and moreover, they have kept in their possession 171 grams of intoxicant material and 04 grams of Heroin.

13. That report of Forensic Science Laboratory, SAS Nagar, Mohali has been received in the present case. As per the Forensic Science Laboratory report, Alprazolam was detected in the sample parcel of intoxicant powder recovered from the possession of the petitioner and 'Diacetylmorphine (heroin) was detected in other parcel. The above said recovery of contraband i.e. 171 grams of Alprazolam effected in this case, which is more than 100 grams, is commercial in nature. "

7. A reference to paragraph 4 reveals that on knowing the police raid, the petitioner had come to the spot driving Verna's car. As per paragraph 7, the police had recovered the substance from the front seat of this car. It is highly improbable that, despite knowing the police raid, the petitioner would have carried drugs with him. It was not the prosecution's case that the contraband was found concealed in some secret chamber or any other area of the car.

8. In *Abida v. State of Haryana*, Neutral Citation No: 2022:PHHC:058722, CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

(a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [*Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Para 6].

- (b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [Customs, New Delhi v. AhmadalievaNodira, (2004) 3 SCC 549, Para 7].
- (c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [UOI v. Prateek Shukla, (2021) 5 SCC 430, Para 12].
- (d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [Union of India v. Niyazuddin&Anr, (2018) 13 SCC 738, Para 7].
- (e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [N.R. Mon v. Md. Nasimuddin, (2008) 6 SCC 721, Para 9].
- (f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [Customs, New Delhi v. AhmadalievaNodira, (2004) 3 SCC 549, Para 7].
- (g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, AIR 2020 SC 721, Para 21].
- (h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. AhmadalievaNodira, (2004) 3 SCC 549, Para 7].
- (i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].
- (j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].
- (k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, (2021) 5 SCC 430, Para 12].
- (l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, 2020 SCC Online SC 84, Para 12].

[31]. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

9. In the light of the principles of law mentioned above, coupled with prima facie appreciation of evidence against the petitioner points out that he is being involved on the evidence that

10. Considering the allegations and the evidence adduced against the petitioner, the first rider of section 37 of the NDPS Act is satisfied. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offence.

11. 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 elaborative 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.

12. 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 bail, 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.

13. 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.

14. 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 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.

(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.

15. The petitioner is directed to join the investigation within five days and also as and when called by the Investigator. 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 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, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

16. 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.

17. 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.

18. 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.

19. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. **It is clarified that in case the petitioner does not mend his ways and repeats the offence or indulges in drugs, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the petitioner to reform and live a normal life but did not mend his ways.**

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 remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

21. The conditions mentioned above imposed by this court are to endeavour that the accused tries to reform, 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."

22. 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.

23. 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.

24. 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.

25. 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.

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. *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

17.05.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.