

CRM-M-4469-2024
CRM-M-24265-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4469-2024
Reserved on: 16.10.2024
Pronounced on: 28.10.2024

Mandeep Masih @ Masih ...Petitioner

Versus

State of Punjab ...Respondent

CRM-M-24265-2024

Lovepreet Singh @ Kishan ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ruhani Chadha, Advocate
for the petitioner(s).

Mr. Jasjit Singh, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
222	28.07.2023	Special Task Force, STF Wing, District SAS Nagar	21-C, 29 of NDPS Act

1. The petitioner(s) incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, seeking regular bail.

2. Petitioner Lovepreet Singh @ Kishan has clean antecedents, however, per paragraph 15 of the bail application of Mandeep Masih @ Masih, the accused has the following criminal antecedents:-

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	93	02.06.2023	336, 342, 365, 34 IPC, 25 and 27 of Arms Act	Gharinda

3. The facts and allegations are taken from para 3 of the short reply filed by the State, which reads as follows:-

“3. That succinctly, the factual matric of the matter is that

on 28.07.2023, ASI Manoj Kumar along-with fellow Police officials were on government vehicle bearing No. PB-65-AD-8743, Make Maruti Swift and the Police party was present at GT Road, KFC, Near area of Jandiala Guru and then time was about 04:20 PM, one scooter Aactiva Scooter, colour white bearing No. PB-02-EG-2012 with three persons was apprehended by the Police. Upon asking their identities, the driver disclosed his identity as Sonu S/o Ajit Singh R/o Mohalla Navi Abadi, Jandiala Guru; the person sitting between disclosed his identity as Lovepreet Singh @ Kishan S/o Lakhbir Singh R/o Ward No.3, Mohalla Shekhpura, Jandiala Guru and the person sitting on behind disclosed his identity as Mandeep Masih @ Masih (present petitioner) S/o Parveen Masih R/o House No.204, Street No.2, Sati Kartar Nagar, Amritsar. ASI Manoj Kumar telephonically intimated to ASI Kuldeep Ram, Head Munsif of STF, Jalandhar Range to send some investigating officer at the above-said spot.

6. *That before conducting search, the Police tried to join witness from public; however, every person expressed their inability. As per the instructions of above-said DSP, personal search of the above-said persons was conducted; however, nothing objectionable was recovered. Thereafter, search of above-said Aactiva Scooter, colour white bearing No. PB-02-EG-2012 was conducted and from the boot of scooter, a polythene was recovered. Upon checking the said polythene, brown colour substance was recovered and when ASI Parminder Singh smelled the same, it found to be like Heroin. Upon weighing the said substance along-with polythene, the same came out to be 305 grams Heroin. The parcel of the same was prepared and the same were sealed with respective seals by the ASI Parminder Singh and above-said DSP and was taken into possession by the Police. Further, the above-said Aactiva Scooter, colour white bearing No. PB-02-EG-2012 was also taken into possession by the Police and written intimation was sent through e-mail to the Police Station STF, SAS Nagar for registration of FIR.*

Therefore, FIR No. 222 dated 28.07.2023 U/s 21- C, 29 NDPS Act, Police Station Special Task Force, SAS Nagar was registered by the Police against the accused persons i.e 1) Mandeep Masih (present petitioner) 2) Sonu 3) Lovepreet Singh."

4. Thus, the Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail and refers to the reply.

7. The quantity allegedly involved in this case is commercial. Given this, the rigors

CRM-M-4469-2024
CRM-M-24265-2024

of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

8. Petitioners seek bail on the ground of dis-parity in the colour of contraband i.e. what was allegedly recovered as per recovery memo, the colour of substance was brown but as per report of FSL, it was white. Without going into this aspect of the matter, there is even more a fundamental ground which although petitioner has not raised but this Court cannot ignore. As per prosecution case, the recovery of Heroin was from the boot of scooter. The driver of the scooter was Sonu and Lovepreet and Mandeep (petitioners) were pillion riders. The recovery of contraband was from the boot of the scooter from a polythene bag. Thus on the face of it the prima facie possession of the scooter would be of driver Sonu who is not the petitioner before this Court. Perusal of the reply does not refer to any other evidence against the petitioners except that they were also sitting on the scooter from whose boot the police had recovered Heroin. There is no evidence that any of these petitioners have taken the scooter from Sonu or the scooter belonged to any of these accused or they had asked Sonu to drive. Thus, primary conscious possession would be driver of the scooter i.e. Sonu because boot of the scooter is usually locked and the keys are with the driver. It is not the case that the lock was not working or the key was recovered from any of the petitioners. Thus, the evidence collected against the petitioners regarding conscious possession is not of sterling quality and consequently, rigors of Section 37 will not operate as bar against granting bail to the petitioners. It is clarified that it is for the prosecution to further investigate about the petitioners possession regarding the scooter and also to lead evidence from the investigation already conducted to connect the petitioners with the recovery of Heroin from the boot of the scooter which was driven by Sonu. Although this aspect might not be material at the time of framing of charges or during the trial but is certainly important at the time of grant of bail because it is only the one sided version of the police which is available for this Court to analyze.

9. For now, the petitioner has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. 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 offense.

10. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], 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:INSC:165 [Para 11]**, (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 SK &Anr, **2017:INSC:686 [Para 7]**, (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. Ahmadalieva Nodira, (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, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].
- (h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (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:INSC:165 [Para 11]**, (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, **2020:INSC:620**, (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:INSC:877 [Para 11]**, 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:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 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.

11. As per paragraph 11 of the bail petition(s), the petitioners have been in custody since 28.07.2023 and petitioners total custody in this FIR is around 1 year and 03 months. Given the quality of evidence regarding the petitioner's conscious possession, viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations and the

CRM-M-4469-2024
CRM-M-24265-2024

other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

13. Given above, provided the petitioners are not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

14. While furnishing a personal bond, the petitioners shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

15. This order is subject to the petitioner's complying with the following terms.

16. The petitioners shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

17. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall surrender all weapons, firearms, and 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

CRM-M-4469-2024
CRM-M-24265-2024

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. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

18. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], 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."

19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioners can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

21. **Petition(s) are allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

28.10.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.