

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7461-2024
Reserved on: 05.09.2024
Pronounced on: 20.09.2024

Avtar Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.K. Choudhary, Advocate and
Mr. Shubham Rana, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
95	05.10.2023	Mehtiana, Distt. Hoshiarpur	22 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. In paragraph 10 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the translated copy of the FIR, annexed to the bail petition, which reads as follows:

“Head Munshi, Police Station, Mohtiana, Hoshiarpur Today I, SI along with A.S.I. Sangat Singh No.1500/Hosi, A.S.I. Joginder Singh No.807/Hosi, PHG Abhinav No.13881 together with laptop & printer were going from village Davida-Ahiana to village Fadma in a Government vehicle driven by Sepoy Ravi Kumar No.1490/Hos. for patrolling and in search of suspected persons. When the police party reached 100 yards outside village Davida-Ahiana in the direction of village Fadma side then two hair cut boys seen coming on a motorcycle bearing No.PB-07-BM-8732, Marka Honda, colored black; who seeing the vehicle of police party coming from front side, then driver of the motorcycle at once tried to turn the motorcycle towards back side, but due to imbalance the motorcycle fell in the middle of the road. I, SI got stopped our vehicle and controlled them

with the help of fellow employees and asked their name and addresses. Then driver of motorcycle told his name Dharminder Kumar @ Monoo S/o Ram Saran, resident of searched Dharminder Kumar alias Monoo according to rule in the presence of fellow employees; then a heavy-weight polythene envelope, black coloured found in the right pocket of his wearing Capry (jacket), which narcotic was opened and checked, substance in the form of then powder was recovered from the envelope; about which Dharminder alias Monoo asked question; then he confirmed that it is narcotic substance. Whereupon recovered narcotic substance was weighed on digital-balance, which was found 210 grams. That was kept in a plastic-dabbi and packed in a cloth bag and prepared a packet. After that Avatar Singh was searched according to rule and then a heavy-weight polythene envelope, black coloured found in the right pocket of his wearing Capry (Jacket), which was opened and checked, then narcotic substance in the form of powder was recovered from it; about which above said Avatar asked the same; then he confirmed that it is narcotic substance. Whereupon recovered narcotic substance was weighed on digital-balance, which was found 140 grams. That was kept in a plastic-dabbi and packed in a cloth bag and prepared a Recovered parcel weighing 210 grams packet narcotic substance in the form of powder; and other recovered parcel weighing 140 grams narcotic substance in the form of power; both parcels were sealed by me/the SI with my stamp bearing JS words. Sample stamp was separately prepared. Stamp after used handed over to A.S.I. Joginder Singh No.807/Hosi, Recovered parcel weighing 210 Grams narcotic substance and 140 grams narcotic substance sealed with JS Stamp taken in police possession vide Farad-Bramdgi as Darminder Kumar alias Monoo, Avatar a proof. Singh and witnesses signed their signatures on the fard/list. Dharminder Kumar Monoo keeping 210 grams narcotic substance and Avatar Singh keeping 140 grams narcotic substance in his possession have committed the offence U/s 22-61-85 of NDPS Act. Therefore, after writing a Ruqa i.e. sending to the police station through PHG Abhinav No.13881 for lodging a case against Dharminder Kumar alias Monoo S/o Ram Saran, resident of Khera-Kalan (Harmoye), police station Mohtiana (Hoshiarpur) AND Avatar Singh S/o Paramjit Singh, resident of village Falahi, police station Mohtiana (Hoshiarpur). After registering the case, made aware of the case number. Special reports be issued; control room and officer Sahiban be informed. I, SI am busy in further investigation on the spot. Sd/- (in Punjabi dialect) Jagjit Singh SI, S.H.O. police station Mohtiana, District Hoshiarpur. Dated 05.10.2023. Today in the area of village Davida-

Ahiana, at 08:05 p.m.

Today in police station: According to document received in police station, a case as per above- mentioned offence entered in the register. Original document together with the copy of FIR, is being sending to the SI/S.H.O. on the spot through arrived employee for further investigation. Control room and officer Sahiban are informed. Special reports prepared and are sending to the Illaqa Magistrate sahib and officer Sahiban. Compiled Rapat No.38, dated 05.10.2023."

4. 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. Petitioner's counsel referred to the following paragraphs of the bail petition:

"3. That admittedly the police party has not joined any independent witness at the time of alleged recovery despite their availability. As per the case of the prosecution, police officials were going towards village Fadma etc in connection with patrolling duty. When the police party reached just ahead of village Davida Ahrana, they saw two persons coming on motorcycle bearing No. PB-07-BM-8732, who on seeing the police party tried to turn back, but on suspicion they were apprehended. As per the prosecution, the petitioner was arrested from village Davida Ahrana, there is a public road/through fair and number of persons travel from this road. It has been alleged in the FIR that the passer-by were tried to be made as witness but everyone expressed their inability however the investigating officer has not mentioned that whether any action/proceeding under Section 187 PC were taken against those persons. Section 187 IPC, is reproduced below for the ready reference of this Hon'ble court :-

"187. Omission to assist public servant when bound by law to give assistance. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purpose of executing any process lawfully issued by a court of justice, or of

preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of offence, an or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

In fact, no efforts have been made by the prosecution to join any independent person during the entire proceedings i.e. seizure and arrest. Hence, there is a violation of Section 100 Cr.P.C., which renders the proceedings regarding search and seizure to be highly doubtful.

4. That bare reading of the FIR reveals that the arresting officer ASI Ashok STF PWL/complainant, himself has conducted the entire investigation, therefore the investigation/proceedings stands vitiated, having been conducted by the complainant himself. The contraband was allegedly recovered by SI Jagjit Singh. SI Jagjit Singh did not forward the information to other empowered officer nor called any empowered officer to carry investigation. Empowered officer was out further called only after the sealing and weighing of contraband allegedly recovered and this was just a mere eye wash.”

7. The State’s counsel opposes bail and refers to para 6 the reply, which reads as follows:

“6. That it is submitted that the present case was registered at P.S. Mehtiana, District Hoshiarpur against the accused Dharminder Kumar @ Sonu on recovery of 210 grams intoxicated powder from him and against the petitioner on recovery of 140 grams intoxicated from him. As per FSL report recovery effected from the petitioner contained Alprazolam salt and the recovery effected from the petitioner falls within the category of commercial quantity as per FSL report. Therefore, the present petition is liable to be dismissed.”

8. The petitioner’s arguments did not point toward any material contradictions. Non-examination of independent witnesses is not an illegality, and its outcome depends upon the nature of evidence tendered in the examination in chief and its cross-examination.

9. As per FSL report, the contraband had Alprozolam in it.

10. Dealing in 140 grams of Alprazolam is a punishable offense under the NDPS Act in the following terms:

Substance Name	ALPRAZOLAM
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Quantity detained	140 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	140.00%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	178
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	ALPRAZOLAM
Other non-proprietary name	*****
Chemical Name	8-chloro-1-methyl-6-phenyl-4H-s-triazolo[4,3-a][1,4]benzodiazepine
Small Quantity	5 Gram
Commercial Quantity	100 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	NDPS Act, 1985 (61 of 1985), S.O. 821(E)
dated	11/14/1985
Sr. No.	30
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	ALPRAZOLAM
Other non-proprietary name	*****
Chemical Name	8-Chloro-1-methyl-6-phenyl-4H-s-triazolo [4, 3-a] [1, 4] benzodiazepine

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

12. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offense punishable for offenses involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity

¹ **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.

to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offense and is not likely to commit any offense while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offense punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

13. The State's Counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

14. 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 exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. 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 them 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 an offense and is not likely to commit any offense while on bail. If either of these 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 the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.

15. The grounds in the bail petition do not shift the burden the legislature places on

the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for anticipatory bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

16. It is not a case of recovery of medicinal drugs but Alprazolam powder. Thus, the judicial precedents in which bail was granted on lesser custody for possessing Medicines, including Alprazolam shall not apply for the petitioner because he was allegedly possessing Alprazolam in powder form, and not the medicines containing the Alprozolam.

17. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail at this stage. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

19. Petition dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

20.09.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.