

CRM-M-11672-2024
Decided on: 02.04.2024

Jagtar Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Verma, Advocate for the petitioner.

Mr. Jasdeep Singh Gill, Addl. AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
430	05.12.2023	City Faridkot	21(b) & 29 of NDPS Act, 1985, Section 52-A of Prisons Act and 7(2) of PC Act

1. The petitioner under arrest for violating the provisions as mentioned above, as per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail on the ground that the quantity of contraband is less than commercial and rigours of S. 37 of NDPS Act do not apply.

2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.

3. Petitioner's counsel prays for bail by imposing any stringent conditions and states that they would have no objection to the conditions, i.e., surrender of weapons, declaration of assets by the petitioner and their spouse, and are also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, if any, and within fifteen days undertakes to disconnect all other mobile numbers. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. The State opposes the bail.

REASONING:

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5. Facts of the case are being taken from the reply dated 18.03.2024, which reads as under:-

"2. That the brief facts of the case are that on 05.12.2023, Assistant Superintendent, Central Jail, vide his letter No.14026 No.ASUT dated 05-12-2023, had informed the Police station City Faridkot with regard to surprise checking in Jail (Block-08) which led to the recovery of one smart mobile phone Realme Black Colour with one mobile connection sim and 100 gm of Heroin from the possession of prisoner Anoop Singh son of Tarlok Singh r/o Jhabal Road, Amritsar Sahib who is a hard core criminal. Accordingly the law was set in motion by jail authorities and got registered FIR No. 430 (supra) was initially registered against said Anoop Singh.

3. That with the commencement of investigation, case property was seized on 06-12-2023 and produced before CJM, Faridkot and as per directions same was deposited at DPO, Faridkot. On 12-12-2023, accused Anoop Singh was produced before Ld. Magistrate and got attested inventory of case property. The Ld. Magistrate, separated 10 gm of Heroin and prepared two representative sample parcels of 05-05 gm each. Accused was arrested in accordance with law.

4. That during police remand, accused Anoop Singh had suffered a disclosure statement in terms of section 27 Evidence Act on 13-12-2023 which led to the recovery of two mobile phones make of Nokia IMEI: 357650133523200 with one sim of Airtel and another mobile phone NOKIA 357650133414293, on his demarcation from the jail premises on 14-12-2023. Further during interrogation, accused Anoop Singh divulged the name of other jail inmates namely i) present petitioner Jagtar Singh, ii) Parbat Singh @ Nihang son of Jagsir Singh r/o Kussa, iii) Gurjinder Singh son of Buta Singh r/o Bora Saida, iv) Sukhdev Singh alias Sebu son of Santokh Singh r/o Moga, v) Sham Lal son of Kashmiri Lal r/o Jammu Basti, Abohar and vi) Amandeep Singh son of Paramjit Singh r/o Chatha, PS Harike confined in Jail at Goindwal (Tarn Taran) about their complicity in the drug trafficking in Jail premises and admitted that he used to supply Heroin to the aforesaid jail inmates, Accordingly the aforesaid prisoners were also nominated as accused vide DDR No. 36 dated 13-12-2023.

5. That in furtherance with investigation, present petitioner along with other nominated accused were produced before the Ld. Magistrate on 14-12-2023. During interrogation accused-petitioner had disclosed that he has been confined in Faridkot Jail for last 18 months as a under trial. In Jail he met with Anoop Singh son of Tarlok Singh r/o Jhabal Road, Amritsar who was serving sentence in murder and NDPS Act cases. Anoop Singh was arranged mobile phone by them and Anoop Singh provided Heroin to him and other jail inmates through his contacts in jail premises. Petitioner disclosed that some Heroin he used to consume himself and some he used to sell other prisoners. he was serving sentence in Central Jail, Faridkot since 2011, he came in contact with prisoner Anoop Singh who used to bring Heroin in Jail from jail official Warden Rajdeep Singh and payment was made to his wife on Google pay no. 98886-86525 and at his instance, his wife Sunita Rani deposited this payment in the bank

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account no. 50100036643700 which belongs to said Rajdeep Singh and sometimes cash was to be paid. Accused petitioner was arrested in accordance with law.

The further investigation surfaced the complicity of Sunita Rani wife of prisoner Sham Lal and Rajdeep Singh Jail Warden, and both were nominated as accused and enhancement of offence under section 29 NDPS Act and 7(2) P.C Act made vide DDR No. 56 dated 14-12-2023.

6. That the further investigation cracked the modus operandi of the drug nexus operating in jail premises. On 14-12-2023 Sunita Rani wife of prisoner Sham Lal was joined in investigation who disclosed that her husband Sham Lal made her mobile call and gave her account no. 50100036643700 belongs to co-accused Rajdeep Singh Warden and directed to deposit Rs. 15000/- in this account for supply of Heroin in Jail.

Said Sunita Rani deposited amount on 16-10-2023 and produced the cash deposit receipt. Sunita Rani was arrested and from her possession mobile phone Vivo along with Sim no. 98886-86525 were recovered and seized.

7. That co-accused Rajdeep Singh was forthwith apprehended and interrogated who admitted that he used to take supply of Heroin in Jail after an interval of 10/10 days and was getting Rs. 60000/- for supply of each consignment. Statement of account of Rajdeep Singh's account no. 50100036643700 was obtained and perused, which transpired that amounts of Rs. 15000/- and Rs. 40,000/- were transferred to Rajdeep Singh on 16-10-2023 and 15-11-2023 respectively by accused Sunita Rani for supply of Heroin. Further the mobile no. 78147-88756 which belongs to co-accused Sunita Rani was in frequent touch with Rajdeep Singh Warden on his mobile no. 9530160273. There is tangible evidence against petitioner to substantiate the petitioner being indulge in drug network active in Jail premises.

9. The sample parcel was deposited at FSL, Bathinda vide Road No. 735 dated 14-12-2023 for chemical analysis and its result was received and detected 29.16% Diacetylmorphine (Heroin) in the contents of parcel. The initial investigation qua petitioner Jagtar Singh and co-accused aforesaid was completed on 05-02-2024 and challan has been presented in the competent court on 09-2-2024. Trial is at initial stage and even charges have not framed against petitioner yet."

6. Given this, the rigours of S. 37 of the NDPS Act do not apply in the present case.

7. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All Sections in the NDPS Act, which specify an offence, also mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders

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mandated in S. 37 of NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

8. In *Sami Ullaha v Superintendent Narcotic Control Bureau*, (2008) 16 SCC 471, the Hon'ble Supreme Court holds that in intermediate quantity, the rigors of the provisions of Section 37 may not be justified.

9. As per custody certificate dated 01.04.2024, petitioner's custody is 03 months & 17 days. The petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course correct. Even a prima facie perusal of paragraph 15 of the bail petition needs consideration for bail.

10. In *Gurbaksh Singh Sibbia v State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *GudikantiNarasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, **2018:INSC:107 [Para 7]**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the

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compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

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 v. State (NCT of Delhi)*, **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

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 *Madhu Tanwar and Anr. v. State of Punjab*, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

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 court, and in case of non-availability, to any

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nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/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, or blocking the aforesaid amount in favour of the concerned ‘Chief Judicial Magistrate’. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the similar amount.

(c). Such court shall have a lien over the funds 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). 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 of this bail order.

(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

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

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15. 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.

16. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

17. The petitioner is directed not to keep more than one prepaid SIM, i.e., one prepaid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

18. 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

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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 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. 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 offence.

19. 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.

20. 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*, **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."

21. 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.

22. 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

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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.

23. 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.

24. 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.

25. 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.

26. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

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

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Whether speaking/reasoned: Yes
Whether reportable: No.