

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CRM-M-12055-2024
Decided on: 19.03.2024

Gurjit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Kanav Bansal, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
201	26.09.2021	Fatehgarh Sahib, District Fatehgarh Sahib, Punjab	22/61/85 of NDPS Act

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as per the FIR captioned above, on the allegations of possessing 3000 tablets of Tramadol, has come up before this Court under Section 439 CrPC seeking bail.

2. In Note II of the bail petition, the accused declares his criminal history, which reads as follows:

Sr. No.	FIR No.	Date	Offences	Police Station
1	51	23.05.2020	452, 506 & 34 IPC	Qila Lal Singh, PS Batala, Punjab

3. Petitioner's counsel prays for bail by imposing any stringent conditions i.e. surrender of firearms and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison 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. Short reply by way of affidavit has been handed over by the State and the same is taken on record. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category and given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

5. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

6. While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

7. Without commenting on previous history, in the given allegation, without prejudice to the rights of the State, the petitioner is entitled to bail subject to the compliance of all terms and conditions mentioned in this order.

8. Prosecution's case is being taken from the reply dated 19.03.2024, which reads as follows:-

"2. Brief facts of the case are as follows:-

(i) On 26-09-2021, the police party of P.S Fatehgarh Sahib was patrolling in the official vehicle and was present at Dushehra Ground, Sirhind. At about 2:30 PM, secret information was received by the police party from the secret informer to the effect that the petitioner Gurjit Singh indulged

in selling intoxicated pills and he was roaming in the area under the pretext of homage at Gurudwara, Fatehgarh Sahib. The informant further stated that the petitioner was selling pills at Railway Station Fatehgarh Sahib at that time and also described the clothes of the petitioner. The information was reliable, hence FIR no.201 dated 28-09-2021, U/s 22 NDPS Act (Annexure P1), was registered against the petitioner Gurjit Singh, duly complying with the provisions of 42 NDPS Act.

(ii) Thereafter, during the investigation, the police party headed by SI Jagtar Singh, visited the spot at Railway Station, Fatehgarh Sahib, where a hair-cut individual, after seeing the police party, perplexed and threw a polythene bag holding in his hand and tried to run away, however, was apprehended by the police Party on the spot. Thereafter, the said individual identified himself as Gurjit Singh alias Guru son of Gurnam G Singh resident of Sarwali, District Gurdaspur (petitioner). Thereafter, the scattered pills were collected by the police party which amounted to 3000 intoxicant tablets.

iii) Thereafter, a personal search of the petitioner was conducted by SI Jagtar Singh after duly complying with the cardinal provisions of NDPS Act, however, nothing intoxicant was recovered from his personal search.

(iv) On 27-09-2021, the drug money amounting to Rs.10,000/- was recovered, as per the statement of the petitioner recorded under section 27 Evidence Act.

3. That as per FSL report, the ingredient present in the recovered tablets was Tramadol Hydrochloride having average quantity 91.7 mg/tablet'. Copy of FSL report is annexed herewith as Annexure R1.

4. That after completion of the investigation, the report under section 173 Cr.P.C was presented before the court on 28-01-2022. The prosecution has cited 11 witnesses. The Charge has been framed on 17-03-2022. Total 6 prosecution witnesses have been examined till date. Now, the case is fixed for 21-03-2024 for prosecution evidence.

5. That the petitioner in the present case, applied for first regular bail U/s 439 Cr.P.C before Sessions Court, Fatehgarh Sahib, which was dismissed by the Ld. Judge Special Court, Fatehgarh Sahib, vide order dated 24-11-2021. Thereafter, petitioner applied for regular bail vide CRM-M 51919 of 2021 before this Hon'ble Court, which was dismissed as withdrawn vide order dated 13-04-2023. Thereafter, the petitioner filed second petition

regarding regular bail application vide CRM-M 61133 of 2023 and the same was dismissed by this Hon'ble Court vide order dated 16-12-2023 (Annexure P-4). Hence, the present petition is the third petition under section 439 Cr.P.C filed by the petitioner.

6. That apart from the present FIR, FIR no.51 dated 23-05-2020, U / s 452, 506, 34 IPC, P.S Qila Lal Singh, Police District Batala, Punjab, has been registered against the petitioner.

7. That the petitioner has been found under conscious possession of recovered contraband of 3000 intoxicant tablets, at the spot, which falls under commercial quantity. Therefore, rigours of section 37 of NDPS Act are applicable in the case in hand.

8. That the contentions of the petitioner for alleged non-compliance of section 50 and 42 of NDPS Act, are wrong and hence denied. It is submitted that all the provisions of NDPS Act, have been duly complied with."

9. As per the custody certificate, the petitioner's total custody is 02 years, 05 months & 20 days. The petitioner has a criminal history which is not being considered as he has already completed pre-trial custody of approximately two years and six months. Thus, he is entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Dheeraj Shukla would be attracted only when the two conditions are fulfilled,

(a). The custody of more than 2 years and 6 months and the delay was not attributable to accused.

(b). The trial is at an initial stage.

10. The petitioner fulfills all the three conditions and thus, section 37 of NDPS Act would not be attracted. 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.

11. 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.

12. 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.

13. 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 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 of an Indian citizen, (If available), when the attesting officer/court deems appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

14. 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.

15. 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.

16. The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-

paid 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."

17. 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.

18. 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.

19. 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.”

20. 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.

21. 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.

22. 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.

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

24. *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

19.03.2024

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Whether speaking/reasoned: Yes

Whether reportable: No.