

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14291-2024
Reserved on: 04.04.2024
Pronounced on: 26.04.2024

Harjit Singh alias Gopa ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ram Kumar Saini, Advocate
for the petitioner.

Mr. Kanav Bansal, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
135	20.07.2023	City South, Moga	21/22/29/61/85 of NDPS Act and Sections 7, 13(2) of PC Act (27-B of NDPS Act added later on)

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 by filing the present petition.

2. As per para 13 of the petition, the petitioner declares the following criminal history:-

Sr. No.	FIR No.	Dated	Police Station	Sections
1	136	20.07.2023	City South, Moga	21/29/61/85 of NDPS Act
2	87	10.05.2022	City Moga	21/29 of NDPS Act
3	65	04.04.2022	City South Moga	21/61/85 of NDP S Act
4	256	23.11.2022	21/22 of NDPS Act	---
5	203	08.10.2023	452/323/427/148/149 IPC	---
6	208	28.08.2021	21/29 of NDPS Act	City South Moga
7	52	08.04.2021	21(a)/61/85 of NDPS Act	City South Moga

3. On 04.04.2024, when the matter was heard, petitioner's counsel made the following statement:-

"Petitioner's counsel prays for bail by imposing any stringent conditions and states that they would have no objection to the conditions i.e. declaration of assets by the petitioner and his 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."

REASONING:

4. Facts of the case are being taken from the reply dated 04.04.2024, which reads as under:-

"3. That brief facts of the case are that on 20.07.2023 a police party headed by ASI Tarsem Singh of CIA Staff, Moga was present at Bahona Chowk, Moga in connection with patrolling and checking of suspected persons then special informer came there and informed that Kirandeep Kaur @ Kirna wife of Gurpreet Singh and Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldeep Singh used to sell intoxicant tablets and heroin and in case raid is conducted then they can be apprehended red handed and from their possession huge quantity of heroin and intoxicant tablets can be recovered. On the basis of said information ASI Tarsem Singh sent ruqa to the police station and got registered the present case.

4. That on receiving the information another police party headed by ASI Sukhwinder Singh reached at the spot and found that two ladies and one male person was already apprehended by the police party headed by ASI Tarsem Singh, as on seen the police party headed by ASI Tarsem Singh said accused had thrown their respective plastic polythenes on the ground. ASI Sukhwinder Singh enquired about the names then first lady disclosed her name as Kirandeep Kaur wife of Gurpreet Singh r/o Sadhan Wali Basti, Moga and second lady disclosed her name as Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu. On enquiry the third accused disclosed his name as Baljit Singh @ Mintu. Police party tried to join public witness, but none joined. ASI Sukhwinder Singh directed said accused persons to pick their respective polythenes, which were thrown by them on the ground. Then accused Kirandeep Kaur picked one polythene and produced the same before ASI Sukhwinder Singh. During checking of polythene 5 strips, each containing 10 tablets, total 50 tablets of Etizolam tablets JP 0.5 mg ETIEXA-0.50 were recovered. Apart from this a small polythene containing 5 grams of heroin was also recovered from it. Two separate parcels i.e. one of 5 strips of tablets and another of heroin were prepared and same were sealed by ASI Sukhwinder Singh with his seal SS. Then accused Jasvir Kaur picked up the polythene, which was thrown by her and produced the same, during checking of it, 4 strips of Etizolam tablets JP 0.5 mg ETIEXA-0.50, each containing 10 tablets, total 40 tablets of were recovered. Parcel of recovered tablets was prepared and same was sealed by ASI Sukhwinder Singh with his seal SS. After that Baljit Singh @

Mintu produced the plastic polythene which was thrown by him on ground, during checking of same 4 strips each containing 10 tablets, total 40 tablets of Etizolam tablets JP 0.5 mg ETIEXA- 0.50. Parcel of recovered tablets was prepared and same was sealed by ASI Sukhwinder Singh with his seal SS. Sample seal was prepared separately.

5. That during investigation of the case, said Kirandeep Kaur @ Kirna wife of Gurpreet Singh and Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldip Singh, got recorded their disclosure statement that they had purchased said 130 intoxicant tablets and 5 grams heroin from Karamjit Singh @ Sahil son of Kulvir Singh, Sona wife of Pawan Kumar, Kalu residents of Sadhan Wali, Jashandeep Singh @ Kali son of Raja Singh, Amarjit Singh resident of Chowk Shekhan, Moga as per instigation of Parkash Singh son of Harbhajan Singh resident of Shri Guru Chander Nagar, Moga. On the basis of said disclosure statement said Karamjit Singh @ Sahil son of Kulvir Singh, Sona wife of Pawan Kumar, Kalu residents of Sadhan Wali, Jashandeep Singh @ Kali son of Raja Singh, Amarjit Singh resident of Chowk Shekhan, Moga and Parkash Singh were nominated as accused in the present and offence u/s 29 of NDPS Act was added vide DDR No.31 Dated 21.07.2023.

6. That during investigation of the present case accused Parkash Singh was arrested by the police on 21.07.2023 and from his possession drug money amounting to Rs.20000/- was recovered.

7. That vide order no.968-69R-SSP, Moga dated 02.08.2023 a Special Investigating Team was constituted for conducting the investigation of the present case. During investigation, it is found that Inspector Lachhman Singh and Ct. Manpreet Singh had received the bribe from accused Kirandeep Kaur @ Kirna wife of Gurpreet Singh, Karamjit Singh @ Sahil, Sona wife of Pawan Kumar, Kalu residents of Sadhan Wali Basti, Moga and Jashandeep Singh @ Kali through accused Parkash Singh. So, vide DDR No.36 dated 02.08.2023 Constable Manpreet Singh and Inspector Lachhman Singh have been nominated as accused and offences u/s 7, 13(2), 88 of PC Act have been added in the present case.

8. That during investigation of the case, accused Amarjit Singh was arrested by the police on 10.08.2023 in connection with the present case.

9. That FSL report in the present case has been received and as per report, from recovered tablets Etizolam salt and from the heroin Diacetylmorphine salt has been found. Copy of FSL report is attached herewith as Annexure R-1.

10. That during investigation of the case, on 10.11.2023 accused Ct. Manpreet Singh had joined the investigation of the case, in compliance of order passed by this Hon'ble Court in CRM-M-59294 of 2023, whereas on 22.12.2023 Inspector Lachhman Singh had joined the investigation in compliance of order passed by this Hon'ble Court in CRM-M-63556 of 2023. However, no recovery was effected from their possession.

11. That vide order dated 968-696-R/SSP, dated 02.08.2023 passed by the Senior Superintendent of Police, Moga, a Special Investigating Team consisting of Superintendent of Police (H), Moga and Incharge CIA Staff, Baghapurana has been constituted for conducting the thorough investigation of the present case.

12. That during investigation of the case accused Karamjit Singh @ Sahil has been arrested by the police on 16.09.2023. Sona was arrested by the police on 17.11.2023. During investigation of the case said accused Sona got recorded her disclosure statement that she alongwith Naina d/o Ashok Kumar and Harjit Singh @ Mota son of Balwinder Singh (Petitioner), both residents of Sadhan Wali Basti, Moga are selling the intoxicants together. On the basis of disclosure statement of accused Sona, Naina d/o Ashok Kumar and Harjit Singh @ Mota (Petitioner) were nominated as accused vide DDR No.20 dated 19.11.2023."

5. Petitioner seeks bail on the ground that there is no evidence connecting him with the commission of offence and he was not named in the FIR. He further submits that five co-accused have already been granted bail and orders of their bail are annexed at Annexures P-2 to P-6. He further submits that although there are several matters pending against the petitioner, but the petitioner is already on bail in six cases. Petitioner's counsel further submits that he has received instructions from the petitioner that in case, this Court is inclined to grant bail, he would voluntarily abide by the undertaking given in the order dated 04.04.2024. He further submits that they shall declare all assets and not claim such declaration as self incrimination, violation of Article 20/21 of Constitution of India or any other fundamental law/right.

6. Counsel for the State opposes the bail on the grounds that petitioner's custody in the present case is just 02 months & 26 days as per custody certificate dated 03.04.2024. He further submits that quantity of Etizolam is commercial as such petitioner is not entitled to bail.

7. An analysis of the above said arguments would lead to the following outcome.

8. Petitioner was arraigned as an accused on the basis of disclosure statement of Sona, who had disclosed to the police that she along with one Naina and the present petitioner were selling intoxicants and based on such statement of co-accused Sona, the petitioner was arraigned as an accused.

9. Perusal of the reply dated 04.04.2024 shows that para 12 mentions only this evidence against the petitioner and nothing else. Since the evidence collected against the petitioner is in the nature of disclosure statement, as such on this ground alone, the petitioner is entitled to bail.

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

11. 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 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.

12. In State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr., the rigour of law lay down by this Court in ***Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1*** was held to be applicable even at the stage of grant of bail. The relevant portion of (NCB) Bengaluru's case (supra), is reproduced herebelow:-

“10. It has been held in clear terms in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial.”

13. 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.

14. 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 matter and though that discretion is unfettered, it must be exercised judiciously, 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.

15. 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.

16. 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.

17. 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.

18. 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, (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)	

19. 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.
20. 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 and also in the order dated 04.04.2024. 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.
21. 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."

22. 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.

23. 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."

24. 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.

25. 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.
26. 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.
27. 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.
28. 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.
29. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
30. *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

26.04.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.