

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19646-2024
Reserved on: 01.08.2024
Pronounced on: 30.08.2024

Harjinder Singh @ Jinder ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rajesh K. Dadwal, Advocate
for the petitioner.

Mr. Nitesh Sharma, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
368	28.11.2023	Special Task Force, STF Wing, Jalandhar Range, Mohali	21 (c), 29 of NPDS 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 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. Facts of the case are being taken from status report dated 25.07.2024 filed by concerned DySP which reads as follows:-

“4. That FIR No. 368 dated 28.11.2023, under Section 21 (c) and 29 of NDPS, was registered at Police Station Special Task Force, District SAS Nagar, on the complaint of ASI Amandeep Singh 7-IRB/23 against accused (1) Hardeep Singh and 2) Harjinder Singh @ Jinder.

5. That it is submitted that the brief facts of the present case are that on 28.11.2023, ASI Amandeep Singh No. 7-IRB/23, STF, Jalandhar Range, Jalandhar along with other police personnel were present in government vehicle near Malap Chowk, near liquor shop and had put up barricading and were checking the vehicles going towards Phagwara Chowk. That at about 12:45 PM two men were seen walking from Kot Pakshia side, who

started to run in the opposite direction upon seeing the police party. They were apprehended by ASI Amandeep Singh No. 7-IRB/23 with the help of other police personnel and asked about their identities, who stated their names as Hardeep Singh and Harjinder Singh @ Jinder (present petitioner). Thereafter, as ASI Amandeep Singh had a doubt that the apprehended persons were in possession of an intoxicating substance, the Investigating Officer SI Hardeep Singh was called on the spot.”

4. 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.

5. The State opposes bail.

6. Petitioner seeks bail on the ground that no recovery was effected from the petitioner in the FIR and as per FIR no search was conducted and no offer was given to the petitioner and no independent witness has been joined by the police. Petitioner seeks bail further on the ground that the search has been conducted in presence of Gazetted Officer only on paper work and the mandatory provisions of NDPS Act has not been complied with.

7. State opposes the bail and has referred to paras no.6 to 11 of the status report which reads as follows:-

“6. That in compliance with Section 50 of NDPS Act, the petitioner Harjinder Singh @ Jinder and co-accused Hardeep Singh were informed of their right by SI Hardeep Singh regarding getting their search conducted from a Gazetted Officer or Magistrate on which both the accused opted to get the search conducted from a Gazetted Officer. Thereafter, in compliance with the due procedure separate non-consent/dissent memos of the accused were prepared.

That thereupon, the Sh. Jagjit Singh Saroya, PPS, Assistant Inspector General of Police, STF, Jalandhar Range, was requested telephonically by SI Hardeep Singh to come at the spot upon which Sh. Jagjit Singh Saroya, PPS, Assistant Inspector General of Police, STF, Jalandhar Range reached at the spot and in due compliance with Section 50 of NDPS Act informed the accused regarding his name and rank and also informed them about their right regarding getting their personal search, conducted from any other Gazetted Officer or before the Magistrate. Thereupon, the petitioner and co-accused Hardeep Singh reposed their faith in Sh. Jagjit Singh Saroya, PPS, Assistant Inspector General of Police, STF, Jalandhar Range and in this

regard separate Consent Memos were prepared. Thereafter, the Assistant Inspector General of Police, STF, Jalandhar Range, in his presence got conducted the search of the accused from St Hardeep Singh. That during the search of co-accused Hardeep Singh, a transparent polythene containing Heroin was recovered from the waist of the lower/pyjama worn by him. That, upon weighing it came out to be 400 grams Heroin along with polythene. Thereupon, recovery memos dated 28.11.2023 of the aforesaid recovery made from the co-accused Hardeep Singh was prepared and the recovered Heroin was taken into police possession. That the petitioner and co-accused Hardeep Singh were then arrested and separate arrest memos dated 28.11.2023 were also prepared.

7. That it is submitted that compliance of Section 52-A of NDPS Act was also made in the presence of Sh. Mohinder Partap Singh Libra, JMIC, Jalandhar on 29.11.2023 and two representative samples measuring 10 grams each were taken out from the recovered bulk parcel of 400 grams heroin and thereafter, the remaining parcel and samples were duly sealed.

8. That aforesaid sample of 10 gm was sent to Forensic Science Laboratory, SAS Nagar, Mohali and thereupon report bearing number 3766/2023/Toxi./FSL/Pb dated 19.01.2024 was received. That the report concluded that "The content of the envelope under reference has been analyzed by chemical, TLC and instrumental analysis. On the basis of analysis, 62.06% Diacetylmorphine (Heroin) has been found present in the content of the envelope.

9. That it is further submitted that in FIR no.368 (supra), Challan/Report under Section 173 Cr.P.C was presented before the Ld. Trial Court on 08.02.2024 and the charges were framed on 15.03.2024. There are total 13 witnesses out of which 03 witnesses have been in chief. That the next date of hearing before the L.d. Trial Court is 02.08.2024.

Criminal antecedents:

10. That it is submitted that other than the present FIR, there are 02 other FIRs registered against the petitioner and the same are being reproduced herein below for the kind perusal of this Hon'ble Court:-

Sr. No.	FIR, date and under section	Police Station	Status
1.	FIR No.4 dated 21.07.2018 under Section 22 of NDPS Act	Division No.1 Jalandhar	Convicted

Role of the petitioner and Evidence against the petitioner:-

11. *That the petitioner was found accompanying the co-accused Hardeep Singh with the intention to sell the recovered Heroin. That the aforesaid fact was also verified during the questioning of the present petitioner and co-accused Hardeep Singh. That, in fact, the petitioner is a repeat offender who does not deserve the concession of bail from this Hon'ble Court."*

8. An analysis of the above submissions would lead to the following outcome. On seeing the police party the petitioner had also started to run in the opposite direction which would show his prima facie knowledge about the co-accused carrying the contraband and as such connivance. FIR is registered with the aid of Section 29 of NDPS Act. Perusal of the petition does not mention a single averment explaining the petitioner's unusual conduct of running away on seeing the police party. It is neither argued nor stated in the petition that petitioner is otherwise afraid of the police. Prima facie coupled petitioner is involved in two cases in which he was acquitted but one FIR he was convicted under Section 21 would another factor consider the petitioner to explain his conduct of unusual behavior on seeing police officials in the company from accused commercial quantity of contraband. The quantity recovered from HS was 400 gms of Heroin which is commercial quantity. Although HS as not with the petitioner but as per prosecution case, on seeing the police, petitioner had tried to run away which would prima facie show his involvement which fact is further to be seen in the light of the previous conviction under NDPS Act.

9. 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.

10. 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 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

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.

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.

11. 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.

12. 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.

13. 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.

14. 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. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

16. Petition dismissed. Interim orders, if any, are recalled with immediate effect. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.