

CRM-M-19976-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19976-2024
Reserved on: 13.09.2024
Pronounced on: 27.09.2024

Ravinder Singh @ Ravinder Singh Gulli ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Karandeep S. Sidhu, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
26	05.08.2023	SSOC, District Fazilka	21(c)/29/25/27 of NDPS Act and 25 of Arms 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. As per paragraph 13 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	45	01.03.2022	21/61/85 of NDPS Act	Sadar Ferozepur
2	116	11.03.2024	52A of Prison Act	City Ferozepur

3. The facts and allegations are taken from the reply filed by the State, which reads as follows:

“FIR No. 26 dated 05.08.2023 u/s 21-C, 29, 25, 27 of NDPS Act & Section 25 of Arms Act was registered in Police Station SSOC, Fazilka. On 05.08.2023, Inspector Baldev Singh, No.5090/INT along with other police officials was present at his office of Counter Intelligence Unit Ferozepur and during that period, he received a secret information that Gagga Gill @ Gagan @ Kali and Veer Singh @ Veeru were habitual of smuggling Heroin. It was further informed that they were having contact with Pakistani smugglers and they used to make internet call to them through

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mobile phone and thereafter, they smuggle Heroin in Indian territory from Pakistan and further supply the same in various States. It was further informed that recently they had smuggled a huge quantity of Heroin from Pakistan and accused Gagga Gill and Veer Singh @ Veeru were transporting the same on motorcycle Super Splendor, without registration number, black in colour and are coming from the side of village Bare Ke border road towards Kille Wala Chowk, Ferozepur. It was further informed that if immediately raid is conducted, they could be apprehended alongwith heavy quantity of Heroin. Finding the information to be trustworthy, Ruqa was prepared, on the basis of which, present FIR was registered. Thereafter, raid was conducted at the place disclosed in the secret information. After sometime, Gaggu Gill and Veer Singh @ Veeru were apprehended coming on motor cycle loaded with bag and after following due procedure, their search was conducted. From their search, 40 packets in bag out of which 39 packets were found containing heroin and one was of weapon, 41 Kgs 800 grams of Heroin, 2 Pistols 9mm alongwith 4 magazine and 100 live cartridges 9 mm, one Pistol .30 Bore along with two magazines and 15 live cartridges of .30 Bore were recovered, which were taken into police possession.”

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 the Petitioner has nothing to do with the alleged offence. No case is made out against the Petitioner as nothing has been recovered from him since he was in judicial custody at the time of alleged recovery.

x

x

x

x

5. That as stated above, the aforesaid case was registered against Gagga Gill @ Gagan Kali who is real brother of present petitioner and Veer Singh @ Veeru. Thereafter, Vikram Singh @Vicky who is also brother of petitioner was taken on production warrant by SSOC Fazilka from central jail Ferozepur in the present case and thereafter petitioner was also taken on production warrant and vide DDR No. 21 dated 22.08.2023 petitioner is nominated in the present case.

6. That the petitioner craved for the kind indulgence of this Hon'ble Court for grant of regular bail in the present case inter-alia on the following grounds:-

i. That initially above said FIR was registered against Gagga Gill @ Gagan Kali and Veer Singh @ Veeru.

ii. That the petitioner is roped in the present case as he is the real brother of co-accused Gagga Gill @ Gagan Kalli and earlier also petitioner was wrongly implicated in FIR No. 45 dated 01.03.2022 U/S 21/61/85 of NDPS Act (Annexure P-1) (later on added section 29 of NDPS Act, 1985 vide rapat No. 28 dated 01.03.2022) registered at Police Station Sadar Ferozepur, District Ferozepur, however petitioner has been acquitted in the said case, vide judgement dated 01.02.2024. Photocopy of judgement dated 01.02.2024 is annexed herewith as Annexure P-3.

iii. That the statement of co-accused is not admissible in evidence and neither can be used against the petitioner. Moreover on the above said statement nothing is recovered from the conscious possession of the petitioner and it is an only vague allegations leveled against the petitioner. On the basis of the above said statement no offence is made out against the petitioner because there is no evidence against the petitioner to connect him with the crime.

It is further respectfully submitted that on the basis of disclosure statement by the arrested person during police custody, it cannot be stamped that the person named on the basis of alleged information has committed any offence within the ambit of NDPS Act, 1985.

It is important to mention here that the name of the petitioner is not named as an accused in the FIR and nothing incriminating is to be recovered from the possession of the petitioner and he has been nominated as an accused on the basis of disclosure statement suffered by the person, who was in custody of the police at the relevant time.

iv. That our own Hon'ble High Court had granted the concession of bail to the petitioners in similar matter where accused were nominated on the basis of disclosure statement by the co-accused, such number of cases are as of the petitioners. Such like cases are 20.07.2022, 20.07.2022, CRM-M-13072 of 2022 decided CRM-M-13263-2022 CRM-M-34803-2021 on decided on decided on 21.04.2022 and CRM-M-33568-2022 decided on 29.09.2022.

Further reliance can be given to Criminal Appeal No.152 of 2013 titled as Tofan Singh Vs. State of Tamil Nadu decided on 29 October, 2020 by

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Hon'ble Supreme Court of India where it was held that it will be a matter of trial whether the said disclosure statement of the co-accused is admissible against the petitioner or not. Similarly, Hon'ble Supreme Court in Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence; 2018[3] RCR[Crl.] 954 CRM-M-12431 of 2021 has also held that the accused only named in the disclosure statement of the co-accused is not admissible in para No. 14 of the judgment.

V. That petitioner is having his permanent place of abode within the local jurisdiction of this Hon'ble Court.

vi. That the petitioner undertakes, that in the event of his release on regular bail, he will abide by the terms and conditions that are so imposed by this Hon'ble Court. The petitioner further undertakes that he will not tamper with the prosecution evidence nor will he influence any witness. Although, the prosecution witnesses are official persons.

vii. The petitioner further undertakes to join investigation and cooperate with the investigation agency as and when required, if granted his the concession of regular bail.

viii. That the petitioner is behind bars in the present case since 31.08.2023 and petitioner has already undergone almost 8 months. However, this Hon'ble Court and Hon'ble Supreme Court has already held in number of cases that it would be a matter trial whether the disclosure statement of the co-accused is admissible against the petitioner or not. In these circumstances and in view of judgment passed by this Hon'ble Court in similar situated cases petitioner craves for grant of regular bail in the present FIR and do hereby undertakes to abide by the conditions imposed upon him by this Hon'ble Court.

7. That the entire case against the accused is nothing but an abuse and misuse of the process of law. Criminal liability of the accused petitioner, if any, will be determined during regular trial. However, having regard to the facts and circumstances of the case, the accused petitioner richly deserved the concession of pre arrest bail in the case.

8. That the entire case against the Petitioner is nothing but an abuse and misuse of the process of law. Criminal liability of the petitioner, if any, will be determined during regular trial. However, having regard to the facts and circumstances of the case.”

7. The State’s counsel opposes bail and refers to para 5 the reply, which reads as follows:

“5. That during interrogation, the above said accused made disclosure

statement that Gagga Gill and Veer Singh that Charanjit Singh @ Channu along with Kulwant Singh @ Kanta were having relations with a Pakistani smuggler namely Dogar; resident of Lahore. It was further disclosed that Kulwant Singh alias Kanta along with other accused communicate with above said smuggler through mobile phone by using different applications and thereafter, smuggled Heroin and weapons into the Indian territory and after arranging carriers, they further supply the same. On the basis of above said information, vide DDR No.25 dated 09.08.2023, Kulwant Singh was nominated in this case. Kulwant Singh was arrested in this case on 11.08.2023. During his personal, one mobile phone make Samsung color black, capacity of two sim cards was recovered, but no sim card was found present in the mobile phone. The said mobile phone was taken into possession by the police. The said mobile phone was sent to FSL Lab for analysis and report and as per the report dated 24.01.2024 issued by Incharge, Digital Cyber Forensic Lab, one virtual/temporary whatsapp number 15753000678 was found in the said mobile phone.”

8. The petitioner’s arguments did not point towards any material contradictions. It was a case of chance recovery. As such, S. 42 would not apply initially, and recovery was not from the person. As such, S. 50 would also not attract. 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 the FSL report, the contraband tested had quantities of Diacetyl morphine.

10. Dealing in 41 kgs and 800 grams of heroin (Diacetyl morphine) is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	41.8 Kg
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	16720.00%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	56
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin
Other non-proprietary name	*****
Chemical Name	Diacetylmorphine
Small Quantity	5 Gram (i.e. equivalent to 0.005 Kg)

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Commercial Quantity	250 Gram (i.e. equivalent to 0.25 Kg)
Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	11/14/1985
Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

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

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.

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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 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.

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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. 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. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

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

(ANOOP CHITKARA)
JUDGE

27.09.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.