



11.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.22563 of 2024
Reserved on: 11.07.2024
Pronounced on: 30.07.2024

Kirandeep Kaur @ Kirna

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Abhilasha Kainth, Advocate for
Mr. B.S. Bhalla, Advocate
for the petitioner.

Ms. Jasjeet Singh Dhaliwal, Assistant Advocate General, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
135	20.07.2023	City South, District Moga	21 and 22 (later on added Section 27-B, 29) of NDPS Act, 1985 (Later on added Sections 7, 13(2), 13(1) of Prevention of Corruption 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 12 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	54 of 2021	-	21, 29 of NDPS Act, 1985	City-1 Moga
2.	148 of 2022	-	22, 29 of NDPS Act, 1985	City South Moga

However, as per custody certificate dated 07.07.2024, the accused has also been convicted in one FIR, the details of which are as under:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	100	28.05.2020	21 of NDPS Act, 1985	City Moga



3. The facts of the case are being taken from reply dated 19.05.2024 and the relevant paragraph(s) of the same reads as follows:

"4. 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 Chownk, Moga in connection with patrolling and checking of suspected persons, then special informer came there and informed that Kirandeep Kaur @ Kirna (Petitioner) wife of Gurpreet Singh and Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldip 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.

5. 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 and on seeing 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 (Petitioner) wife of Gurpreet Singh, r/o Sadhan Wali Basti, Moga and second lady disclosed her name as Jasvir Kaur @ Jassi wife of Baljit NO 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 (Petitioner) picked up 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."

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 and in support thereof, has referred to relevant paragraph(s) of the reply which reads as under:

"6. That during investigation of the case, said Kirandeep Kaur @ Kirna (Petitioner) 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 statements 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 FIR and offence u/s 29 of NDPS Act was added vide DDR No.31 dated 21.07.2023.

16. Evidence Against the Petitioner: *Petitioner was apprehended red handed by the police party on 20.07.2023 and from her possession 5 strips of Etizolam tablets JP 0.5 mg ETIEXA-0.50, each containing 10 tablets, total 50 tablets and 5 grams heroin were recovered."*

6. Prima facie, the quantity involved in the present case is approximately 36% of the commercial quantity.

7. 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.

8. In Tofan Singh v. State of Madras, the majority view is that a confessional statement is not admissible in evidence. This view has been followed by Hon'ble Supreme Court in Cr.A 1273 of 2021, Sanjeev Chandra Agarwal v. Union of India, decided on 25th October, 2021.

9. Given the similarly placed co-accused have already been granted bail, coupled with the quality of evidence, prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

10. For the time being, the petitioner, who, as per the custody certificate dated 07-07-2024, has been incarcerated since 22-07-2023, has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

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. This order shall come into force from the time it is uploaded on this Court's official webpage.

12. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

13. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

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

14. This order is subject to the petitioner’s complying with the following terms. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

15. 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 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, and 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 offense.

16. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. 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.”

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. A certified copy of this order would not be needed 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. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

19. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.07.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.