10 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M No. 21984 of 2024
Reserved on: 11.07.2024
Pronounced on: 30.07.2024

Sushil Kumar @ Suraj **...Petitioner**

Versus

State of Punjab **…Respondent**

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Manpreet Kanda, Advocate with
Ms. Pridhi Sandhu, Advocate
for the petitioner.

Mr. Jasjeet Singh Dhaliwal, Asst. Advocate General, Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
22	02.03.2024	Division No.3, Police Commissionerate Jalandhar	18, 61, 85 NDPS Act, 1985

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 21 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts of the case are being taken from reply dated 10.07.2024 and the relevant paragraph(s) of the same reads as follows:

> *"4. That it is respectfully submitted that brief conspectus of facts culled out from the FIR are that SI Jaswinder Singh along with ASI Nitin Sharma 1780, ASI Gauri Shankar 1905 were on government vehicle No. PB08 DS 4498 and driver C Sukhjinder Singh 2367 were on patrolling and in search of suspected persons and were carrying laptop and printer along with them. When the police reached at Damoria Bridge one hair cut young man was seen walking from the side of railway station. He was having black colour polythene with weight in his right hand. Upon looking at the police party he became nervous and tried to turn back. On having suspicion SI Jaswinder Singh with the assistance of accompanied employees nabbed him and enquired about his name and address who told his name as Sunny Jagga son of Harish Chander R/o C-61 Leather Complex Road New Rajan Nagar Jalandhar.*

7. When the said packets were opened then opium was recovered which was packed in polythene. Upon weighing the same, it was found (01/01 Kg) Opium.

13. That during further investigation, accused Amandeep was arrested in this case on 05.03.2024 and during interrogation, accused Amandeep suffered disclosure statement and on the basis of his disclosure statement, accused Amarjit Kaur was nominated in this case. The accused Amandeep has disclosed in his disclosure statement that Munish Kumar alias Mani Thakur who currently lives abroad in England and who used to supply opium from Jharkhand. He used to supply opium to Sushil Kumar alias Suraj (Petitioner) r/o Gobind Nagar, Tanda. Thereupon, Sushil Kumar alias Suraj (Petitioner), Pawan Kumar, Nishat Bhagat, Sunny Jagga and Sikandar used to supply the same through courier service to Parmod Kumar. The co-accused Parmod Kumar used to clear said parcel at Airport with the help of Rupesh Sharma, Amit Sharma, Rahul Jain and Pushpinder Jain, who were working in Custom Department and their posting is at Foreign Post Office, near ITO, Mata Sundari Road, Delhi. In this process, accused Pawan Kumar, Mani Kumar of Harish Kumar r/o C-61, Leather Complex Road, New Rajan Nagar, Jalandhar, Nishant Bhagat resident of Bhargo Camp, Jalandhar, Sunny Jagga son of Harish Kumar resident of C-61, Leather Complex Road, New Rajan Nagar Jalandhar and Sikandar son of Late Vijay Kumar resident of House No. WS-55, Satra Mohalla, Basti Shiekh, Jalandhar are also involved. After that said parcels were supplied to the addresses disclosed by Manish Kumar alias Manni Thakur.

14. That the accused Amandeep Singh further disclosed that Munish Kumar @ Mani Thakur used to make payment for his work through his girlfriend Amarjit Kaur wife of Jorawar Singh daughter of Harjinder Singh resident of village Sangal Sohal, District Jalandhar from the last year i.e. since November 2023. Munish Kumar @Mani Thakur used to send money through various means to Amarjit Kaur and Amarjit Kaur comes in her car THAR vehicle number PB08-EY-5674 and gave it to different places by calling him. Sometimes she gave 02 lakhs, sometimes 03 lakhs on different times. In this way, Amarjit Kaur had made payment of about rupees 16/17 lacs to him. Amarjit Kaur herself drives her THAR vehicle. Most of the times Amarjit Kaur herself used to make the payment, but sometimes her brother Sunny Sohal used to make said payment to him. Amarjit Kaur and Sunny Sohal had full knowledge about smuggling of Opium. Amarjit Kaur and Sunny Sohal had been managing the drug money as Manish Kumar used to send the entire drug money to Amarjit Kaur. Both accused Sunny Sohal and his sister Amarjeet Kaur used to save profit income from the said business of smuggling of opium. Sometimes Munish Kumar sent money to Amit Kumar son of Mahinderpal Shukla resident of House No. 202, Guru Harkrishna Nagar, Banga Road, Phagwara, District Kapurthala by way of Hawala (money laundering) business and Amarjit Kaur used to give this mone money to him and sometimes he himself brought money from Amit Kumar. Amarjit Kaur distributes the money sent by Munish Kumar and keeps the rest as per his dictates. Only Amarjit Kaur can tell about the money which she keeps, where she spends it and how much money she gives to her brother Sunny Sohal. Only Amarjit Kaur knows about it. On the basis of disclosure statement of accused Amandeep, accused Amarjit Kaur and her brother Sunny Sohal were *nominated in the present case vide DDR No.05 dated 05.03.2024. Thereupon, Amarjit Kaur and Sunny Sohal were arrested on 06.03.2024.*

15. That the co-accused Amarjit Kaur is stated to be king pin of the drug racket as she used to make payment to the accused Amandeep who used to further distribute the same amongst other members of the gang. However, from source information this fact has came into light that the co-accused Amarjit Kaur has purchased a Mahindra Thar from the said drug money. As the per the disclosure statement of co-accused Amarjit Kaur dated 06.03.2024 she has disclosed that Amandeep and his partners used to supply opium on the address specified by Munish Kumar and the income extract from said drug money, Munish Kumar used to pay the same to co-accused Amarjit Kaur through hawala and she used to distribute the said money to Amandeep on going on her Mahindra Thar bearing number PB08-EY-5674. The co-accused Amarjit Kaur has further disclosed in her disclosure statement that she used to pay a sum of Rs. 2 Lacs or some times 3 Lacs at different place and at different time to Amandeep and she has paid a total sum of Rs. 16/17 Lacs. Sometimes, co-accused Amarjit Kaur herself drive her Mahindra Thar car while some time his brother Sunny Sohal used to make payment to Amandeep. The co-accused Sunny Sohal and his sister Amarjit Kaur are having full knowledge of this illicit trade and drug money.

Role of the petitioner

16. That the role of the petitioner is that he used to take opium from Amandeep, which was being provided to Amandeep by Munish Kumar alias Mani Thakur who currently lives abroad in England and who used to arrange opium from Jharkhand. The petitioner alongwith Pawan Kumar, Nishat Bhagat, Sunny Jagga and Sikandar used to supply the same through courier service to Parmod Kumar. The co-accused Parmod Kumar used to clear said parcel at Airport with the help of Rupesh Sharma, Amit Sharma, Rahul Jain and Pushpinder Jain, who were working in Custom Department and their posting is at Foreign Post Office, near ITO, Mata Sundari Road, Delhi. In this process, accused Pawan Kumar, Mani Kumar of Harish Kumar r/o C-61, Leather Complex Road, New Rajan Nagar, Jalandhar, Nishant Bhagat resident of Bhargo Camp, Jalandhar, Sunny Jagga son of Harish Kumar resident of C-61, Leather Complex Road, New Rajan Nagar Jalandhar and Sikandar son of Late Vijay Kumar resident of House No. WS-55, Satra Mohalla, Basti Shiekh, Jalandhar are also involved. After that said parcels were supplied to the addresses disclosed by Manish Kumar alias Manni Thakur. While the petitioner was apprehended in this case on 03.03.2024, on his right shoulder he wear a bag of blue and yellow colour and on searching the bag, one polythene envelopes containing opium was recovered. After weighing the opium, it come to 2 kg, then the same was taken into police possession.

Evidence against the petitioner

17. That it is respectfully submitted that during police remand, the petitioner suffered disclosure statement on dated 04.03.2024, wherein he disclosed that *he was working as a international courier service provider since 3 years and earlier he used to send courier parcel containing opium abroad USA, Canada, England, Australia and New Zealand etc. at his own. In addition to this, he used to supply to Balihar Singh son of Daya Singh resident of ward no.10, Dashmesh Nagar, Tanda, Hoshiarpur on retail basis and also to Pawan son of Jagdish Kumar resident of House No. 34283, Bhargo Camp Jalandhar, Sunny Jagga and Nishan Bhagat resident of Bhargo Camp Jalandhar and Sikandar son of Late Vijay Kumar resident of House No. WS-55, Satran Mohalla, Basti Sheikh, Jalandhar. Who again forwarded through courier parcel abroad through Parmod Kumar son of Ishwar Singh resident of B-1/26 Rajveer Colony, Gharoli Extension, East Delhi with the help of Rupesh Sharma, Amit Sharma, Rahul Jain, Pushpinder Jain in Foreign Post Office, ITO Mata Sundari Road, Delhi, Who used to pass the parcels from Delhi Airport and these parcels reached at the addresses mentioned by Munish Kumar alias Mani Thakur abroad."*

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:

"*11. That during investigation, the petitioner Sushil Kumar @Suraj was arrested in this case on 03.03.2024 and since then he is in custody. During investigation, the co-accused Parmod Kumar suffered disclosure statement which is reproduced as under:*

"I am working at ITO Mata Sundari Road, Delhi near Foreign Post Office for dispatching the parcels. Pawan Kumar son of Jagdish Kumar resident of House No. 3483, Bhargo Camp, Jalandhar, Mani Kumar son of Harish Chandra resident of C-61, Leather Complex Road, New Rajan Nagar, Jalandhar, Sushil Kumar alias Suraj (Petitioner) son of Ramesh Kumar resident of Mohalla Gobind Nagar, Darapur Bypass Tanda, District Hoshiarpur, who are doing the business of supplying opium through courier to Canada, America, England, Australia, New Zealand, etc. They took my help to forward their courier parcels from Delhi. They used to tell me that their courier parcels are coming, so I immediately contact the employees of customs department Rupesh Sharma, Amit Sharma, Rahul Jain, Pushpinder Jain in Foreign Post Office, ITO Mata Sundari Road, Delhi. The said persons used to pass the parcels from Delhi Airport. For this purpose, Pawan, Amandeep and Sushil Kumar (Petitioner) used to give money through UPI and I kept my share and gave rest of the amount to employees of customs department. In this way, our business runs smoothly without any hindrance and we get handsome income.

12. That during investigation, twelve accused stood arrested in the present case and around 21 kg of Opium and four vehicles were recovered from them."

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

Although a perusal of evidence collected so far points out towards the petitioner involvement, however this Court is concerned with bail at this stage, for which the parameters are entirely different.

7. 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 a 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 specify an offence and 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 the 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.

8. 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.

9. As per paragraph 14 of the bail petition, the petitioner has been in custody since 01.03.2024. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

10. 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 the official webpage of this Court.

11. 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.

12. 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)	

13. 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.

14. 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.

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, 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 restrain the accused from influencing the witnesses and repeating the offence.

16. Any observation made hereinabove is neither an expression of opinion on the

case's merits nor shall the trial Court advert to these comments.

17. 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.

18. **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.