

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23800-2024
Reserved on: 08.08.2024
Pronounced on: 30.08.2024

Sunny Jagga ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
22	02.03.2024	Division No.3, Jalandhar	18, 29, 27-A of 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 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which 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 cut hair young man was seen walking from the side of railway station. He was having black coloured 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 (Petitioner).

5. That before conducting the search of petitioner, SI Jaswinder Singh informed about his name, rank and posting and served a notice under

section 50 of NDPS Act. SI Jaswinder Singh informed the petitioner that he is having doubt of some narcotic substance which is lying in the black colour polythene in his right hand but he has right to get the search of the said black polythene conducted from Magistrate or from Gazetted Officer and they can be called on the spot to which the petitioner replied that he trusts upon him and he can conduct the search of black polythene.

6. That the petitioner placed his signatures in English upon the notice and the same has been witnessed by ASI Nitin Sharma 1780, ASI Gauri Shankar 1905. Before conducting the search of black polythene in the right hand of the petitioner, every efforts were made to join public witness but everybody showed their inability then SI Jaswinder Singh in the presence of accompanied employees conducted the search of black coloured polythene.

7. That on opening the black polythene, a cardboard box meant for courier which was bearing: To Ramandeep Kaur PO Box 20002, RPO AIRDRIEAIROIE, Alberta, TUA OC 2, Canada and when it was opened 2 polythene packets were recovered which were lying under the laddu sweets. 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. The recovered packets were placed in the same polythene and then put the same into the separate plastic boxes and thus prepared two separate parcels of the case property. The parcels of case property were marked as Mark A and Mark B. The recovered cardboard box meant for courier was kept inside the cloth parcel and the sweets box of laddu was kept inside another plastic box and thus two separate parcels were prepared.

8. That SI Jaswinder Singh sealed the above said four parcels containing the case property with seal impression "JS". Sample seal has been prepared. separately. The stamp after use was handed over to ASI Nitin Sharma. Then the parcels containing (01/01 Kg) opium as well as the case property of cardboard box meant for courier which is in the cloth parcel and case property sweets laddu contained in the separate parcel of plastic box which are duly sealed with stamp JS were taken into police custody as proof of evidence through separate memos.

9. That the petitioner failed to produce any license or permit for keeping the 2 Kg of opium and the writing was sent to Ct. Mandeep Singh to the police station for the registration of FIR."

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's counsel opposes bail and refers to the reply, and especially to para 10, 16, and 17, which read as follows:-

"10. That as consequence thereof, present FIR was initially registered under section 18/61/85 of NDPS Act at Police Station Division No.3 Jalandhar against the petitioner Sunny Jagga. During investigation,

petitioner suffered two disclosure statements to the effect that he along-with his brother Mani Kumar, his cousin brother Pawan Kumar and Nishant Bhagat, used to send Opium abroad under the garb of parcels. Amandeep, Sunil Kumar and Harmanpreet used to supply opium to them and where they were to supply the opium, was told to them by Suraj and Amandeep. For clearing the courier, Nishant Bhagat used to give money to Parmod. On the basis of disclosure statement of the petitioner, Manni Kumar, Pawan Kumar, Nishat Bhagat, Parmod Kumar, Amandeep, Sunil and Harmanpreet were nominated in the present case vide DDR No.47 dated 02.03.2024 and offence under Section 29 of NDPS Act was added. The co-accused Parmod Kumar also made disclosure statement naming Pawan Kumar, Manni Kumar, Sushil Kumar @ Suraj, and Amandeep Singh who were also nominated in the above said case.

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 come 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 Komar and the income extract from said drug money, Munish Kumar used to pay the same to co-accused Amarin Kaur through hawala and she used to distribute the said money to Amandeep on going on her Mahindra Thar bearing number P308-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 drove 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 along-with Pawan Kumar, Nishant Bhagat, Sushil Kumar @ Suraj and Sikandar used to supply opium through courier service to Parmod Kumar, who was working in ITO Mata Sundari Road, Delhi near Foreign Post Office for dispatching the parcels abroad. They do the work of sending clothes, medicine etc. in parcels abroad by keeping the opium packets in Parcels and sent to foreign countries like Canada, America, England, Australia, New Zealand etc. Every month they used to supply opium 60/70 kg. They used to deposit the parcels at the post office and it reaches the given address after few days. The opium was got arranged by Sushil Kumar @ Suraj from Amandeep and Harmanpreet son of Amrik Singh which was provided to them by Munish Kumar alias Mani Thakur who currently lives abroad in England after getting it arranged from Jharkhand. The address was provided by Sushil Kumar @ Suraj and Amandeep where opium was to be supplied. Nishant Bhagat mostly

transfers money to Pramod Kumar through UPI for clearing the courier. If raid the locations of Amandeep and Sushil Kumar @Suraj, they may be apprehended with large quantity of opium. 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. While the petitioner was apprehended in this case on the day of FIR i.e. 02.03.2024, a black polythene containing cardboard box meant for courier which was bearing: To Ramandeeep Kaur PO Box 20002, RPO AIRDRIEAIRORIE, Alberta, TUA OC 2, Canada and when it was opened 2 polythene packets were recovered which were lying under the laddu sweets. When the said packets were opened then opium was recovered which was packed in polythene. After weighing the opium, it come to 1 kg in each packet, 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 statements vide memo dated two disclosure 02.03.2024 and 07.03.2024. On 02.03.2024, the petitioner disclosed that he along-with his brother Mani Kumar, his cousin brother Pawan Kumar and Nishant Bhagat, used to send Opium abroad under the garb of parcels. Amandeep, Sunil Kumar and Harmanpreet used to supply opium to them and where they were to supply the opium, was told to them by Suraj and Amandeep. For clearing the courier Nishant Bhagat used to give money to Parmod.

As per disclosure memo dated 07.03.2024, the petitioner mentioned that one person named Bhupinder Singh son of Daljit Singh resident of 48 Chak No. 46 G. B., Tehsil Vijay Nagar, District Ganga Nagar (Rajasthan), who has Balero vehicle number PB22-B- 4343 used to supply opium to him in the area nearby to Shahkot, Jalandhar. He supplied 4 kg opium in the month of November 2023 and 6 kg opium in the month of December 2023 apart from supplying 4 kg twice in the year 2024 to him."

6. The quantity recovered from the petitioner was 2 kgs of opium, and the commercial category starts when the quantity exceeds 2.5 kgs of opium.
7. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.
8. Section 2 (vii-a) of the NDPS Act defines commercial quantity as 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.

9. 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.

10. As per paragraph 8 of the bail petition, the petitioner has been in custody since 02.03.2024. Per the custody certificate dated 07.08.2024, the petitioner’s total custody in this FIR is 05 months. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie 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.

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 the official webpage of this Court.

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. 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. 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 instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offence.

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

30.08.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.