

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24904-2024
Reserved on: 10.09.2024
Pronounced on: 27.09.2024

Satya Devi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Tanvir S. Grewal, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
29	26.02.2024	Sadar Nabha, District Patiala, Punjab	22 of the NDPS 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. Per paragraph 6 of the bail application, the accused has the following criminal antecedents:-

Sr. No	FIR No.	Dated	Offenses	Police Station
1	149	11.08.2019	20 of the NDPS Act	Sadar Nabha, Patiala
2	140	18.05.2021	22 of the NDPS Act	Sadar Nabha, Patiala

3. The facts and allegations are taken from the reply filed by the State. On Feb 26, 2024, based on prior information, the Police seized 950 tablets containing Tramadol Hydrochloride from a transparent polythene bag thrown by the petitioner, on seeing the police. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
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 made the following submission:

“The present petition has been filed for the grant of regular bail to the petitioner in case FIR no.29 dated 26.02.2024

(ANNEXURE P-1 at Page 11), under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at P.S. Sadar Nabha, District Patiala, Punjab.

It is alleged by the investigating agency in the instant case that, on dated 26.02.2024, a secret information was received against the petitioner being involved in the sale of intoxicating tablets. It is alleged that in pursuance of the said secret information, a raid was conducted and the petitioner was apprehended along with 950 loose tablets.

In fact, the petitioner was illegally arrested on 26.02.2024 from her house at village Rohti Channa. The said house of the petitioner is on the outskirts of city Nabha on the Nabha- Bhadson Road. The police of PS Sadar Nabha has even installed CCTV cameras right opposite the house of the petitioner across the said road and the house of the petitioner is very visible in the said Camera. Thus, in the CCTV Footage of the said Camera dated 26.02.2024, the petitioner can be clearly seen being taken by the police of PS Sadar Nabha from her house empty handed and without any alleged recovery effected from her. The said fact can be verified from the footage of the said CCTV Camera from the said time.

A mere glance at the said CCTV Footage would show that the petitioner has been picked up by the police from her house prior to the registration of the instant case and then a false recovery has been planted upon her. Thus, the petitioner is innocent and has no relation with the allegations leveled in the present FIR.

Apart from the instant case, the petitioner is involved in 2 other NDPS cases both involving non-commercial quantity i.e. FIR no. 149 dated 11.08.2019, under section 20 NDPS Act, PS Sadar Nabha, Patiala and FIR no.140 dated 18.05.2021, under section 22 NDPS Act, PS Sadar Nabha, Patiala. The petitioner was granted the concession of regular bail in both the said cases vide orders dated 23.09.2019 and 25.01.2022, respectively, passed by the Ld. Judge Special Court, Patiala. ANNEXURE P-2 at Page 13 and ANNEXURE P-3 at Page 15.

The petitioner is a household lady and is responsible for the upbringing of 4 children.

The presentation of the challan in the instant case shall take a considerably long time.

No recovery is to be effected from the petitioner and the custodial interrogation of the petitioner shall not serve any lawful purpose. Furthermore, a perusal of the said CCTV footage mentioned herein above would clearly establish that the instant case is one which has been planted upon the petitioner by the police of PS Sadar Nabha and no offence as alleged has been committed by the petitioner.”

6. 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.

7. The petitioner's counsel levels severe allegations and has referred to paras 3 to 5 of the bail petition, which read as follows:

“3. That, in fact, the petitioner was illegally arrested on 26.02.2024 from her house at village Rohti Channa. The said house of the petitioner is on the outskirts of city Nabha on the Nabha-Bhadson Road. The police of PS Sadar Nabha has even installed CCTV cameras right opposite the house of the petitioner across the said road and the house of the petitioner is very visible in the said Camera. Thus, in the CCTV Footage of the said Camera dated 26.02.2024, the petitioner can be clearly seen being taken by the police of PS Sadar Nabha from her house empty handed and without any alleged recovery effected from her. The said fact can be verified from the footage of the said CCTV Camera from the said time.

4. That the family members of the present petitioner have been running pillar to post to procure the CCTV Footage of the said Camera from the police of PS Sadar Nabha. However, the police has flatly refused to provide any such CCTV Footage to the family of the petitioner.

5. That a mere glance at the said CCTV Footage would show that the petitioner has been picked up by the police from her house prior to the registration of the instant case and then a false recovery has been planted upon her. Thus, the petitioner is innocent and has no relation with the allegations leveled in the present FIR.”

8. On the directions of this Court, the concerned DySP has filed a specific reply to these paras, which read as follows:

“3) That the contents of Para No.3 of the petition are totally wrong and hence denied that the petitioner was illegally arrested on 26.02.2024 from her house at village Rohti Channa. As far as CCTV cameras installed opposite the house of the petitioner is concerned, it is submitted that Police of Police Station Sadar Nabha, District Patiala never installed any such CCTV cameras opposite the house of the petitioner. However, from the enquiry it has transpired that said CCTV cameras are installed by the residents of the vicinity at their own so that the surveillance in the area could be kept regarding anti-social activities by bad elements. However, owing to the requests of the Villagers, the DVR was placed in a separate room in the Police Post Rohti Pul, PS Sadar Nabha. The storage capacity of the CCTV camera is not adequate and the footage of such an older period i.e. 26.02.2024 is no more preserved in the said CCTV camera. On the other hand, the

allegations levelled by the petitioner are totally false, and frivolous and are only put forth in this petition just to save her skin by the petitioner.

4) *That the contents of Para No.4 of the petition are totally wrong and hence denied. Rather, no footage of CCTV Camera can be obtained of such an old period i.e. 26.02.2024 as the said Camera does not store the footage/recording of such longer period. Neither the petitioner ever asked the police to provide footage nor the police have ever refused for the same. The allegations are false, frivolous and vexatious to the knowledge of the petitioner and do not carry any weightage.*

5. *That the heavy recovery in this FIR as well as the criminal antecedents of the petitioner show that the petitioner is itself indulged in drug menace since long and now the petitioner is trying to save her skin by levelling baseless allegations against the Investigating Agency.”*

9. An analysis of the pleadings does not prima facie prove the petitioner's case at this stage and can be established in a further investigation or during the trial.

10. The State's counsel opposes bail.

11. It would be appropriate to refer to para 5 of the status report dated 10-07-2024, filed to the bail petition, which reads as follows:

“5. *That after registration of FIR, investigation was taken by ASI Gurcharan Singh No.1648/PTL and on reaching Anaj Mandi, Village Galwatti, the police party found that a lady was standing there along with a transparent plastic polythene in her right hand. On seeing the police party, above said lady (petitioner) all of sudden became perplexed and after throwing said plastic polythene she started walking towards Nabha side. On which, present petitioner was apprehended by lady Const. Rajveer Kaur No.594/PTL and on enquiry, she disclosed her name and address as Satya Devi wife of Balwinder Singh alias Babli, resident of Village Rohti Channa, Police Station Sadar Nabha, District Patiala (present petitioner). Then ASI Gurcharan Singh (IO) after apprising the petitioner of his identity disclosed that he has suspicion of some intoxicant substance with her and in the plastic polythene threw by her and he wants to get her search conducted through lady constable, but she has legal right that she can get her search conducted from a Gazetted officer or Magistrate, who can be called at the spot or she can be taken to them. In this regard, a notice U/s 50 of NDPS Act was served. Then, the present petitioner after thinking for a while reposed faith upon ASI Gurcharan Singh and agreed for the search by lady constable. In this regard, memo of consent statement was recorded and the same was signed by the present petitioner. Hence, the compliance of section 50 of NDPS Act was duly made.*

Role of the petitioner

10. *That the petitioner was apprehended by the police from Anaj Mandi, Village Galwatti, Nabha on the basis of a secret information and a recovery of 950 loose intoxicant tablets was affected from the plastic transparent polythene which was carried by the petitioner and threw by her on seeing the police party. The said recovery falls in the ambit of commercial quantity as per the*

provisions and schedule enshrined in the NDPS Act.”

12. As per the FSL report, the average weight of one tablet was 381 mg, and it contained Tramadol Hydrochloride. Thus, the total weight of 950 tablets is 361.95 grams.

13. Dealing in 361.95 grams of Tramadol Hydrochloride is a punishable offense under the NDPS Act in the following terms:

Substance Name	Tramadol
Quantity detained	361.95 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	144.78%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1762(E)
dated	4/26/2018
Sr. No.	238 ZH
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1761(E) & S.O. 3448(E)
dated	26-Apr-2018 & 26-Jul-2018
Sr. No.	110Y
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

14. 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.

15. In Md. Aliul Islam @ Aliul Islam @ Aliul vs The State of West Bengal, Criminal Appeal No.1202/2024, the Hon’ble Supreme Court held as under:-

“Heard learned counsel for the appellant in support of the petition and learned counsel for the State and perused the material on record. The appellant is in custody for approximately 1 year 4 months.

During the course of submission it was pointed out by the learned counsel for the appellant that in another case the appellant has been granted bail and therefore, similar relief may be granted by this Court in this case.

The said submission is in response to the submission made by the learned counsel for the respondent-State that this is not the only case in which the appellant has been apprehended. She further submitted that a huge quantity of codeine cough syrup was recovered from the premises (Godown) which has been tenanted by the appellant herein. Considering the facts on record, in our view, the case for bail is made out.”

16. In *Nandalal Mondal @ Abhay Mondal vs The State of West Bengal*, MANU/SCOR/00327/2024, Hon’ble Supreme Court held as under:-

[2]. The allegations are that the petitioner along with other accused persons were found in possession of two plastic bags a cough containing a total of 10,000 ml. Of codeine phosphate narcotic substance. It further syrup, which is notified as a narcotic substance. It further appears from the contents of the FIR that the petitioner, who was found in conscious possession of two white plastic containers both of which contained 5,000 ml. each of the said liquid. He was apprehended at the spot and is in custody since then.

[3]. The respondent State of West Bengal has filed its counter affidavit, in which it is candidly acknowledged that though the investigation is complete and the chargesheet has been filed, however, the charges are yet to be framed. The prosecution proposes to examine 10 witnesses. The conclusion of trial will, thus, take considerable time. The petitioner is in custody for the last more than one and a half years.. He does not have any criminal antecedents.

[4]. According to learned counsel appearing on behalf of respondent State, the narcotic substance allegedly recovered from the petitioner's possession is of commercial quantity' and, as such, the rigors of Section 37 of the NDPS Act are attracted. We have considered the submission.

[5]. Taking into consideration the period already undergone by the petitioner in custody; the fact that he does not have any criminal antecedents and also keeping in view that the prolonged incarceration will not serve the cause of substantial justice, however, without expressing any views on the merits of the case, we are inclined to release the petitioner on bail at this state. The petitioner is, accordingly, directed to be released on bail subject to the following directions:

- (i) The petitioner shall furnish bail bonds to the satisfaction of the Trial Court.
- (ii) The petitioner shall appear before the Trial Court regularly on each and every date of hearing.

(iii) In case the petitioner is found involved in any other case under the NDPS Act, in that event, the bail granted to him shall stand cancelled automatically and he shall be liable to surrender immediately.

6. The accordingly. Special Leave Petition stands disposed of accordingly.”

17. In SK. Nasiruddin @ Nasirddin SK. Vs State of West Bengal, Criminal Appeal No.1415 of 2024, the Hon’ble Supreme Court held as under:-

[5]. We note the submission of the learned counsel for the appellant that the appellant was arrested on 12.04.2022 and since then he has been in custody as an under trial prisoner. Even though charges have been framed, trial is yet to begin but there is no likelihood of the trial being taken up and completed within a short period of time. It is also submitted that the appellant does not have any criminal antecedents. It is also brought to our notice that the High Court while rejecting the regular bail application had erroneously recorded that 50 ltrs. of codeine phosphate was recovered from the appellant. This is perhaps a mistake as recovery of only 5 ltrs of codeine phosphate which was mentioned in the FIR.”

18. In Abida v. State of Haryana, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. 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 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 offence, and is not likely to commit any offence while on bail. If either of these two 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 that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

- (a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [Narcotics Control Bureau v Kishan Lal, 1991 (1) SCC 705, Para 6].
- (b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [Customs, New Delhi v. Ahmadaliev Nodira, (2004) 3 SCC 549, Para 7].
- (c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a

case for grant of bail has been made out. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [Union of India v. Niyazuddin SK &Anr, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].

(e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [N.R. Mon v. Md. Nasimuddin, (2008) 6 SCC 721, Para 9].

(f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[31]. 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 subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

19. It will be relevant to extract para 7 of the bail petition, which reads as follows:

“7. That the petitioner is a household lady and is responsible for the upbringing of 4 children namely N, N, S and R. The presentation of the challan in the instant case shall take a considerably long time. No recovery is to be effected from the petitioner and the custodial interrogation of the petitioner shall not serve any lawful purpose. Furthermore, a perusal of the said CCTV footage mentioned herein above would clearly establish that the instant case is one which has been planted upon the petitioner by the police of PS Sadar Nabha and no offence as alleged has been committed by the petitioner.”

20. In the light of the judgments referred to above, coupled with the fact that the petitioner is a woman and given her age 36, her children are young and dependent, out of whom three are girls of likely vulnerable age, and the fact that the petitioner was noticed carrying loose tablets in a transparent bag, and the petitioner's custody, would satisfy the rigors of S. 37 of NDPS Act.

21. Given this, the criminal antecedents are also not legal grounds for denying the rigors of S. 37 of the NDPS Act at this stage.

22. 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.

23. 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.

24. 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)	

25. This order is subject to the petitioner's complying with the following terms.

26. 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.

27. 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.

28. 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."

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

30. 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.

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

(ANOOP CHITKARA)
JUDGE

27.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.