

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28169-2024
Reserved on: 16.10.2024
Pronounced on: 24.10.2024

Harjinder Singh @ Honey ...Petitioners

Versus

State of Punjab ...Respondent

CRM-M-42809-2024

Harinder Singh @ Happy ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Verma, Advocate
for the petitioner (s).

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
286	24.12.2023	City Moga, District Moga	22 (c) of the NDPS Act, 1985

1. The petitioners incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.

2. Per paragraph 13 (2) (viii) of the bail application and per paragraph 10 of the reply dated 26.07.2024, petitioner Harjinder @ Honey has the following criminal antecedents:-

Sr. No.	FIR No.	Date	Offenses	Police Station
1	22	27.06.2020	20 of the NDPS Act, 1985	-
2	162	08.10.2016	379-B-34 IPC	Sadar Jagraon
3	65	15.06.2017	30/506/34 IPC	Sadar Barnala
4	188	27.11.2017	379-B/379/411/34 IPC	Nihal Singh Wala

5	2	03.01.2018	379/411/420/482/473/120-B IPC	Rahon
6	228	28.10.2018	22 of the NDPS Act	City Moga
7	57	22.02.2024	42/52-A of the Jail Manual Act	City Faridkot
8	131	23.11.2022	21 of the NDPS Act	Mehna
9	131	23.11.2022	21 of the NDPS Act	Badhni Kalan
10	353	31.10.2021	52-A of the Jail Act	City Faridkot
11	336	14.10.2017	379/411 IPC	City Barnala

3. Similarly, per paragraph 9 of the reply dated 12.09.2024, filed by the concerned DySP, petitioner Harinder Singh @ Happy has the following criminal antecedents:-

Sr. No.	FIR No.	Dated	Offences	Police Sta- tion
1	345	26.06.2018	365/34 IPC	Tallewal

4. The facts and allegations are taken from the reply filed by the State in CRM-M-28169-2024. On Dec 24, 2023, based on prior information, the Police seized 145 tablets containing Etizolam from Harjinder's possession and 105 tablets containing Etizolam from Harinder's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

5. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

6. The petitioners' 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 State's counsel opposes bail and refers to the reply.

8. It would be appropriate to refer to para 3 of the reply dated 02-10-2024, filed by the concerned DySP, in CRM-M-28169-2024, which reads as follows:-

“3. That in compliance of said order it is submitted that in the present case two parcels i.e. one containing 145 loose tablets (recovered from the polythene thrown by Harjinder Singh @ Honey) and another parcel containing 105 loose tablets (recovered from the polythene thrown by Harinder Singh @Happy), were sent to FSL for analysis.

As per FSL report following tablets were recovered:

From the first parcel of total 145 tablets:

i) 120 Dark peach coloured tablets average weight 131mg/table containing Olanzapine salt, (total weight 15.72 grams)

ii) 25 light peach coloured loose tablets, average weight 126mg/tab, containing Etizolam salt (total weight 3.15 grams)

From Second Parcel of total 105 tablets:

i) 81 Dark peach-coloured tablets average weight 133mg/table containing Olanzapine salt, (total weight 10.773 grams)

ii) 24 light peach coloured loose tablets, average weight

125mg/tab, containing Etizolam salt (total weight 3.00 grams) Were recovered. Copy of FSL report is attached herewith as Annexure R-1. As per NDPS Act, the recovery of 2.5 grams of Etizolam falls within ambit of commercial quantity. So, in this way recovery effected in the present case, falls within ambit of commercial quantity and provisions of section 37 of NDPS Act are applicable in the present case.”

9. Dealing in Etizolam is a punishable offense under the NDPS Act in the following terms:

Substance Name	Etizolam
Quantity type	Commercial

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1276(E)
dated	3/23/2021
Sr. No.	238ZZC
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Etizolam
Other non-proprietary name	*****
Chemical Name	4-(2-Chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3a][1,4]diazepine
Small Quantity	0.05 Gram
Commercial Quantity	2.5 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.1275(E)
dated	3/23/2021
Sr. No.	110ZN
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Etizolam
Other non-proprietary name	*****
Chemical Name	4-(2-Chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3a][1,4]diazepine

10. 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.

11. 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.”

12. 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.”

13. 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.”

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

15. The petitioner, in para 6 of the bail petition in CRM-M-28169-2024 (At page 7), has leveled serious allegations of false implication, and thus, it would be relevant to refer to para 6, which reads as follows:

“6. That it is apposite to mention here that the allegations against the petitioner and his co-accused namely Harinder Singh @ Happy are totally false in view of the fact, that the petitioner has been picked up from his residence on 23.12.2023 along-with his swift car bearing registration no. PB-45A-6200, the same is reflected from the CCTV Footage installed in the house of the petitioner; in the video the petitioner was seen being taken by the police officials along-with his car from the resident and subsequently the present FIR has been registered. A copy of the Compact Disc containing the video is being appended herewith as ANNEXURE P-2.”

16. To understand the prima facie credibility of the evidence, it shall be appropriate to refer to paras 4 and 5 of the reply dated 26-07-2024, in CRM-M-28169-2024 filed by the concerned DySP, which read as follows:

“4. That brief facts of the case are on 24.02.2023 a police party headed by ASI Gurdeep Singh was present under the bridge situated at Akalsar Chowk, Moga then special informer came there and informed that Harjinder Singh @ Honey son of Rashpinder Singh @ Bhinder resident of Bhangu Patti Bilaspur and Harinder Singh @ Happy son of Gurcharan Singh resident of Basti Rama, Bilaspur are coming from Dusanjh to Moga on swift Desire car no. PB45A-6200 of white colour for selling the intoxicant tablets, and in case barricading is held at some suitable place then they can be apprehended red handed and from their possession huge quantity of

intoxicant tablets can be recovered. On the basis of said information ASI Gurdeep 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 Charanjit Kaur reached at the spot and started barricading at Dusanjh Road Katcha Dusanjh Road, Moga. In the meantime, one Swift Dezire car No. PB-45-6200 was supported which was coming from Dusanjh side from which two person having haircut were travelling. ASI Charanjit Kaur signalled to stop the car, then instead of stopping the car, said persons tried to take U-turn, but suddenly engine of car was stopped, due to which both the persons opened the doors of the car and thrown plastic polythenes on the ground after taking the same from the pockets from their pants. ASI Charanjit Kaur with the help of police party apprehended them and on enquiry the driver of the car disclosed his name as Harjinder Singh @ Honey son of Rashpinder Singh resident of Bhangu Patti, Bilaspur and second person disclosed his name as Harinder Singh @ Happy son of Gurcharan Singh resident of Bilaspur. Police party tried to join public witness, but no body found present there, due to darkness and fog. Then ASI Charanjit Kaur introduced herself to Harinder Singh @Happy and Harjinder Singh @ Honey and told them that she has doubt that there is some intoxicant substance in their possession, so their search is to be conducted, but they have legal right to get conduct the search in presence of any gazetted officer or any magistrate. But both of them replied that they have faith upon ASI Charanjit Kaur and she can conduct the search. In this regard ASI Charanjit Kaur issued notice u/s 50 of NDPS Act to them. Then Harjinder Singh @ Honey picked up the plastic polythene thrown by him on the ground and produced the same before ASI Charanjit Kaur, during checking of same 145 loose peach colour tablets were recovered. Then Harinder Singh @ Happy picked up the plastic polythene thrown by him on the ground and produced the same before ASI Charanjit Kaur, during checking of same 105 loose peach colour tablets were recovered. Two separate parcel of recovered tablets were prepared and same were sealed by ASI Charanjit Kaur with her seal CK and sample seal was prepared separately.”*

17. The story of the car's engine suddenly stopping and the absence of details about how it restarted and how it was brought to the police station prima facie indicate some element of truth in the petitioners' allegations. On this ground, coupled with the quantity involved, custody of more than nine months, and other factors peculiar to this case alone, the petitioner creates a dent in the allegations.

18. Per the custody certificate dated 15.10.2024, the petitioner Harjinder's custody in this FIR is of 9 months and 20 days and similar is that of Harinder Singh. Given the drugs were medicines that attracted violation of S. 22 of NDPS Act, 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 further pre-trial incarceration at this stage.

19. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make a case for bail.

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

20. Given above, provided the petitioners are not required in any other case, the petitioners 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.

21. While furnishing a personal bond, the petitioners 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)	

22. This order is subject to the petitioners complying with the following terms.

23. The petitioners shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioners 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.

24. Given the background of allegations against the petitioners, 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 petitioners 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.

25. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused do 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."

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

27. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioners 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.

28. Petitions allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

24.10.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.