

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-26654-2024  
Reserved on: 08.08.2024  
Pronounced on: 30.08.2024

Pawan Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Divya Sharma, Advocate  
for the petitioner.

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

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station              | Sections                          |
|---------|------------|-----------------------------|-----------------------------------|
| 22      | 02.03.2024 | Division No.3,<br>Jalandhar | 18, 29, 27-A of NDPS Act,<br>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 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.

5. *That before conducting the search of Sunny Jagga 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 above said Sunny Jagga that he has some doubt regarding some narcotic substance which is lying in the black colour polythene in your right hand but you are having right to get the search, of black polythene in your right hand, conducted from Magistrate or from Gazetted Officer and they can be called on the spot where the above said Sunny Jagga replied that I trust you and you can conduct the search of black polythene in my right hand.*

6. *That the above said Sunny Jagga 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 nabbed Sunny Jagga 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 colour polythene.*

7. *That on opening the black polythene cardboard box meant for courier which was bearing: To Ramandeep Kaur PO Box 20002, RPO AIRDRIEAIORIE, Alberta, TUA OC 2, Canada and when it is 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.”*

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 following portion of reply which read as follows:-

**“Role of the petitioner**

17. *That the role of the petitioner is that petitioner along- with Sunny Jagga, 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. The opium was got arranged by Sushil Kumar @ Suraj from Amandeep which was provided to him by Munish Kumar alias Mani Thakur who currently lives abroad in England after getting it arranged from Jharkhand. 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 Customs Department and their posting is at Foreign Post Office, near ITO, Mata Sundari Road, Delhi. In this process, petitioner, co-accused Sunny Jagga, Mani Kumar of Harish Kumar, Nishant Bhagat and Sikandar were also involved. After that said parcels were supplied to the addresses disclosed by Manish Kumar alias Manni Thakur r/o England. While the petitioner was apprehended*

*in this case on 09.03.2024 and he got recovered 2 polythene in black color from the Almirah lying in his rented office near Company Bagh, Punjab Press Club, Jalandhar. On searching it, 3 kg Opium was recovered and the same was taken into police possession.”*

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 6 of the bail petition, the petitioner has been in custody since 09.03.2024. Per the custody certificate dated 07.08.2024, the petitioner's total custody in this FIR is 04 months and 28 days. 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, subject to the compliance of terms and conditions mentioned in this order.

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.