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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No. 26732 of 2024
Reserved on: 11.07.2024
Pronounced on: 30.07.2024

Prince ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Manoj R. Sharma, Advocate
for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
8	26.07.2020	State Special Operation Cell, District Amritsar	21, 22, 25, 27-A, 29 of NDPS Act and Sections 25, 27 of Arms 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. In paragraph 10 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	208	25.07.2020	Under Sections 21-C, 29, 61, 85 of NDPS Act, 1985	Dinanagar, District Gurdaspur
2.	72	17.07.2020	Under Sections 21-B, 29, 61, 85 of NDPS Act, 1985	Narot Jaimal Singh, Distt. Pathankot

However, as per custody certificate dated 10.07.2024, the accused-petitioner, besides above referred cases, is involved in one more FIR the details of which are as under:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	219	04.11.2019	Under Sections 379-B, 326, 341, 34 IPC	Civil Line Batala

3. The facts of the case are being taken from reply dated 05.07.2024 and the



relevant paragraph(s) of the same reads as follows:

"2. That, the brief facts of the case are that, on dated 26-07-2020 ASI Amit Sharma, Counter Intelligence Gurdaspur was present at Counter Intelligence office Gurdaspur, where he received a secret information that Petitioner-accused Prince S/o. Amrik Masih R/o. Vill. Chandu Manj, Batala, Distt Gurdaspur who has links with Pakistani smugglers is active in smuggling of Heroin and Ammunition across the border from Pakistan. Petitioner-accused Prince along with his associates Yunas Masih, Ranjit Masih @ Sonu, Waris and Sajjan Masih @ Robin Masih were gathering to supply a big consignment of Heroin and Arms Ammunitions to some other party and if a raid be conducted without any delay then the aforesaid persons could be apprehended along with large quantity of Heroin and Arms Ammunitions.

3. That, On dated 26-07-2020, on the basis of above said secret information, a police party was constituted which was headed by ASI Varinder Singh, Counter Intelligence, Pathankot, apprehended the Petitioner-accused Prince and Yunas Masih from Adda-Taragarh, Dera Baba Nanak road, Police District Batala. during personal search of Petitioner-accused Prince, one pistol of 30-Bore MADE IN CHINA having CAL-30 MAUSER MADE IN CHINA. NORINCO written on its body along with 01-magazine of 30 bore and 10-cartridges live of 30 bore without any authorization were recovered from his possession and during personal search of accused Yunas Masih, 01-magazine of 30 bore and 09-cartridges live of 30 bore without any authorization were recovered from his possession."

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 has referred to relevant paragraph(s) of the reply which reads as under.

"During questioning Petitioner-accused Prince divulged that he was having links with Pakistan based Smuggler namely Khan and Nahra and he was trying to smuggle big consignment of Heroin and Arms ammunitions through International Border area of sector Bamial Distt Pathankot Petitioner-accused Prince was having others associates namely Ranjit Masih @ Sonu, Savinderpal Singh, Jagdeep Singh @ Jaggi, Gurwinder Singh @ Nikka and aunty Surjit Kaur who were helping him in this act. In the month of July 2020 Petitioner-accused Prince along with his above said associates Jagdeep Singh @ Jaggi, Gurwinder Singh @ Nikka and Ranjit Masih @ Sonu had crossed Indo Pak Border from the area of sector Bamial Distt Pathankot and got the consignment of 05 Kgs Heroin, two 30 bore pistol along with 03 magazine and 29 live cartridges from above said Pak Smugglers Khan and Nahra. Petitioner-accused Prince kept one KG heroin to himself, Jagdeep Singh @ Jaggi, Ranjit Masih @ Sonu and Gurwinder Singh @ Nikka. Petitioner-accused Prince gave one KG heroin to aunty Surjit Kaur and he kept remaining consignment of Three Kgs Heroin and two 30 bore pistol along with 03 magazine and 29 live cartridges with him. Petitioner-accused Prince has sold his share of above said Heroin to some party in Rs two lacs and he gave one Kg Heroin to his associates Jagdeep Singh @ Jaggi. Petitioner-accused Prince gave remaining consignment of 02 Kgs Heroin and two .30 bore pistol along with 03 magazine and 29 live cartridges and Rs 02 lacs Indian Currency to accused



Yunas Masih which he concealed in his house. After few days Petitioner-accused Prince came to house of Yunas Masih and took 02 KGs Heroin and one Pistol along with one magazine and 10 live cartridges from Yunas Masih, to deliver that to some party on the directions of above said Pak smugglers. Remaining one pistol, 02 magazines and 19 live cartridges were concealed by Yunas Masih in his house. On dated 26-07-2020 Petitioner-accused Prince again came to the house of Yunas Masih and than they both took that remaining one pistol, 02 magazines and 19 live cartridges with themselves and were going to deliver that to some party. In the meanwhile, they were arrested by above said Police party."

Reasoning

6. 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.

7. However, the allegations regarding heroin were on the basis of disclosure statement and infact no actual recovery of heroin took place.

8. In Tofan Singh v. State of Madras, the majority view is that a confessional statement is not admissible in evidence. This view has been followed by Hon'ble Supreme Court in Cr.A 1273 of 2021, Sanjeev Chandra Agarwal v. Union of India, decided on 25th October, 2021.

9. For the time being, the petitioner, who, as per the custody certificate dated 10-07-2024, incarcerated for 3 years, 11 months, and 7 days, has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

10. Given the facts and circumstances of the case, coupled with the quality of evidence, 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 this Court's official webpage.

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 Ilqa 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. 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.

16. 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.”

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

30.07.2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No.