

CRM-M-27398-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-27398-2024
Reserved on: 05.08.2024
Pronounced on: 12.08.2024

Abhiraj Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. A.P.S. Sandhu, Advocate and
Mr. Ashish Kaushik, Advocate
for the petitioner.

Mr. Malkiat Singh, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0159	20.07.2023	Ranjit Avenue, Amritsar	21, 27-A of NDPS Act (Section 25, 29, 61 of NDPS Act and 25, 54 of Arms Act added later on)

1. The petitioner, aged 20 years but has history of two criminal cases at such a young age is again in custody on the allegations of supplying a .30 bore pistol to Gurjit Singh from whose possession 100 grams of Heroin was allegedly recovered by the police and who had allegedly sold 10 kgs of Heroin from December, 2022 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.	315	03.10.2022	341, 323, 336, 506, 148, 149 IPC, 25, 27, 54, 59 of Arms Act	B-Division, Amritsar
2.	65	03.06.2023	307, 148, 149 IPC, 25, 27, 54 of Arms Act	D-Division, Amritsar

3. Facts of the case are being taken from short reply dated 15.07.2024 filed by Assistant Commissioner of Police which reads as follows:-

“4. On 20.07.2023, ASI Shamsheer Singh along with other

police officials posted at Anti Gangster Staff, Amritsar in connection with patrolling and in search of bad elements was present at Anand Park, Ranjit Avenue, Amritsar. There, ASI Shamsheer Singh received secret information that Manpreet Singh @ Mannu Ghanshampuriya and Balwinder Singh @ Doni S/o Harbans Singh along with their other associates are carrying on an illegal business of selling heroin in Punjab and other States and their one associate Gurjit Singh son of Rajinder Singh, resident of House No. 378, Housing Board Colony, C-block, Ranjit Avenue, Amritsar, who was already involved in some FIRs of heroin smuggling and as per directions of Manpreet Singh @ Mannu Ghanshampuria, he was coming going on foot at Ranjit Avenue C-block market for supply of heroin to some party and he can be apprehended with heroin and drug money. As the aforesaid information was true, cogent and reliable, hence, based upon the 'Ruqa' sent by ASI Shamsheer Singh, the aforesaid FIR No. 159 dated 20.07.2023, under Section 21, 27A NDPS Act, PS Ranjit Avenue, Amritsar was registered.

5. That thereafter on the same day i.e. 20.07.2023, pursuant upon the aforesaid information, the accused Gurjit Singh son of Rajinder Singh who was coming from Housing Board Colony, was apprehended by the police party and his personal search was conducted in presence of Gurinderpal Singh, PPS, the then Assistant Commissioner of Police, Detective, Amritsar in accordance with law, during which two mobile phones were recovered from his possession. During custodial interrogation, the accused Gurjit Singh s/o Bajinder Singh suffered disclosure statement that he had been indulging in selling heroin and he has purchased one Swift car No. PB02-CD-1218 from drug proceeds which was parked outside his house. In addition to this, he has earned Rs. 03 lakhs from drug proceeds and this drug money along with 100 GM of heroin was lying in one almirah in his residential house and can get it recovered. Therefore, on the basis of disclosure statement of the accused Gurjit Singh S/o Rajinder Singh, 100 GM of heroin and drug money Rs. 03 lakhs were recovered from one almirah of his residential house and the aforesaid car Swift No. PB02-CD-1218 was recovered from outside his house, which were taken into police possession in accordance with law and the accused Gurjit Singh s/o Rajinder Singh was arrested in the aforesaid case FIR No. 159/2023 (supra) accordingly.

6. That it is submitted that on the next day the accused Gurjit Singh s/o Rajinder Singh along with parcel of contraband was produced before the learned Court of competent jurisdiction. The proceedings under Section 52-A NDPS Act were initiated and police remand of the accused Gurjit Singh s/o Rajinder Singh was granted by the learned Magistrate.

7. That during the course of investigation of the aforesaid case FIR No. 159/2023 (supra), based upon the disclosure statement suffered by the accused Gurjit Singh s/o

Rajinder Singh, one Tejbir Singh Gill S/o Lakhbir Singh R/o Nangli, Amritsar was also nominated as co-accused as the accused Gurjit Singh s/o Rajinder Singh disclosed that Tejbir Singh Gill is also an associate of the accused Manpreet Singh Ghanshampuriah and Balwinder Singh @ Doni and he used to supply heroin to Tejbir Singh Gill also. Therefore, Tejbir Singh Gill was arrested on 22.07.2023 and during investigation, he admitted that accused Gurjit Singh S/o Rajinder Singh had supplied him 100/100 GM of heroin three times near Metro Mall, bypass GT Road Amritsar and he had given Rs. 4.50 Lakhs in cash to the accused Gurjit Singh s/o Rajinder Singh.

8. That thereafter during investigation the accused Gurjit Singh S/o Rajinder Singh made further disclosure statement on 22.07.2023 that one Rajbir Singh @ Doctor S/o Surinder Singh R/o Village Kandowali, Amritsar has supplied him about 10 KG of heroin since December 2022 up till now sent by the accused Manpreet Singh @ Mannu Ghanshampuriah and Balwinder Singh @Doni and the drug proceeds thereof was paid to Rajbir Singh. Therefore, Rajbir Singh @ Doctor was also nominated as co-accused and offence under Section 29 of the NDPS Act was added.”

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.

6. Counsel for the petitioner submits that although the police had recovered 100 gms of Heroin from Gurjit Singh and it was his disclosure statement that he had sold 10 kgs of Heroin from December, 2022 but the allegations against the petitioner are that he supplied pistol to Gurjit Singh along with live cartridges. Petitioner has criminal antecedents and without commenting upon quality of evidence but considering the crime attributed to the petitioner coupled with the fact that he is in custody in this case for 11 months and 12 days as per custody certificate dated 19.07.2024 which would take it to almost one year on the ground of pre-trial custody, he is entitled to bail. Petitioner seeks bail on the ground that the evidence is disclosure statement and it is not connected.

7. State counsel submits that petitioner has criminal history and in case this Court grants bail to the petitioner, he is likely to indulge in the crime again and has referred to paras no.18 and 19 of the reply which reads as follows:-

“ROLE OF PETITIONER

18. That it is submitted that on the basis of the Investigation carried out in the present case FIR No. 159/2023 (supra), it has revealed that the present petitioner Abhiraj Singh @ Abhi had supplied one illegal pistol 30bore to the co-accused Tejbir Singh who had further provided to the co-accused Gurjit Singh S/o

Kewal Singh and this pistol was recovered from the co-accused Gurjit Singh.

EVIDENCE AGAINST PETITIONER

19. That it is submitted that during the course of investigation of the present case FIR No. 159/2023 (supra), the co-accused Tejbir Singh and Gurjit Singh had suffered disclosure statements that the present petitioner Abhiraj Singh @ Abhi had given one illegal pistol 30 bore to the co-accused Tejbir Singh who had further provided to the co-accused Gurjit Singh S/o Kewal Singh and this pistol was recovered from the co-accused Gurjit Singh.”

8. As per paragraph 5 of the bail petition, the petitioner has been in custody since 04.08.2023. Per the custody certificate dated 19.07.2024, the petitioner’s total custody in this FIR is almost 1 year. 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.

9. 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. This bail is subject to the condition that the petitioner shall not indulge in crime whatsoever and if he indulges in any crime where the sentence is more than 07 years, then the State shall file an application for cancellation of bail.

10. 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.

11. 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)	

12. 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.

13. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and residence of the victim until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (CrL.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

14. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, and 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.

15. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the victim's property, workplace, and residence until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (CrL.) 458; and *Aparna Bhat v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

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

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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

12.08.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.