

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27733-2024
Reserved on: 16.12.2024
Pronounced on: 19.12.2024

Palwinder Singh @ Pinda ...Petitioner

Versus

Union of India through NCB Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Harpreet Singh Multani, Advocate and
Mr. Harmanpreet S. Mander, Advocate
for the petitioners.

Mr. Premjit Singh Hundal, Sr. Panel Counsel
for UOI.

ANOOP CHITKARA, J.

Crime No.	Dated	Police Station	Sections
3	18.03.2024	NCB, Chandigarh	8, 18, 23 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above has come up before this Court under Section 439 CrPC seeking regular bail.

2. Per paragraph 6 (xi) of the bail application, the accused has the following criminal antecedents:-

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	122	07.11.2022	323, 324, 341, 148, 149 IPC	Sadar Kapurthala
2.	32	21.03.2024	307, 353, 186, 506, 148, 149 IPC and 25/27 of Arms Act	Sadar Kapurthala

3. The facts and allegations are taken from the reply filed by the NCB, which reads as follows:

“2. That on 18.03.2024 at about 08.00 Hrs. information was received by Ajay Kumar, Intelligence Officer, NCB, Chandigarh that one courier parcel bearing AWB No. 1863433681 is lying at DHL Express Limited, 55, GT Road, Dhandhari Khurd Road, Ludhiana which has been booked by Mandeep Singh S/o Jaswinder Singh R/o Village Janian Chahal, Jalandhar, Punjab.
3. That the above-mentioned information was reduced into writing by Ajay Kumar IO, NCB, Chandigarh where he also further stated that if the parcel be checked then Narco substance can be recovered. The same was then forwarded to Smt. Meera Kumari Meena, Superintendent, NCB, Chandigarh who then formed, a team, consisting of Karamvir Singh, IO (Seizing), Himanshu, JIO (Co-IO) & Mukesh Kumar Mavai, Sepoy for acting as per law.

Further, the deponent Sh. Kuldip Tomar, IO was detailed as the Investigation Officer of the case. Accordingly, the above-mentioned team of NCB reached DHL Express Limited, 55, GT Road, Dhandhari Road Khurd, Ludhiana (PB) on 18.03.2024.

4. That on reaching at the said place, two persons named Mahinder Kumar S/o Shiv Charan and Mayank Chauhan S/o Kunwar Pal Singh were associated as independent witnesses. They were also issued written notices in this regard. Further they were disclosed about the information.

5. That Karamvir Singh IO and his team gave their personal search to the witnesses. Nothing suspicious was found in the personal search of NCB team. They were in possession of mobile, wallet, stationery and one suitcase containing the seizure kit. Himanshu Anand, JIO was having the custody of NCB departmental seal baeing impression of "NCB CHD-18".

6. That in presence of both the independent witnesses the said parcel bearing AWB No. 1863433681 was bought from the X-ray room. The suspected parcel was then shifted to the conference room for the ease of further proceedings.

7. That the consignment was found having documents attached such as Proforma Invoice having signature of Mandeep Singh, KYC document having copy of Aadhar card no. 4582 0986 1255 and PAN Card no. HNPPS7761R, also having signature of Mandeep Singh. Airway bill and Proforma Invoice consignor name was mentioned as Mandeep Singh S/o Jaswinder Singh, r/o Village Janian Chahal, Tehsil Shahkot, Jalandhar, Punjab and consignee name was Sukhpreet Singh r/o Crowther Street, 14, Door number, Wolverhumton, Birmingham, Wolverhempton, Wv109AG, united Kingdom. The mobile numbers were mentiones as 9501788493 and 447466557611.

8. That, thereafter the consignment was opened in the presence of both the witnesses which found to contain one brown colour carton box wrapped with brown colour tape. Then after opening the cartoon box some clothes and one fan of Polarwinpro brand was found. On checking the fan some substance was seen in the motor of Fan which was wrapped in brown colour tape. Then on opening the motor of Fan 10 small size packets wrapped with brown colour tape were founds. Then thereafter packets were marked as number 1 to 10.

9. That thereafter the packet which was marked as 1 was cut open and it was found to contain dark brown colour sticky substance of which a little amount was tested using DD Kit which resulted positive for Opium. Similarly, the rest of the packets were cut opened one by one and small amount of substances contained in the rest of the packets was one by one tested using DD Kit which also resulted positive for Opium. After that, all the packets which were marked as 1 to 10 packed into the motor of Fan same as the packing was made along with the things which were taken out from that box and after that box was put into the white colour cloth bag and marked as Lot A. Thereafter, official brass seal having impression NCB CHD-18 was taken from Himanshu JIO Officer and Lot-A was lac sealed.

10. That the weight was found to be 477 grams in total. The individual weight of each packet are mentioned in the Panchnama."

4. The petitioner's counsel made the following submissions:

"1. That it is an admitted fact that the present incident

occurred at around 09:00 PM on 20.03.2024 but the NCB Officials got this FIR gave information for registration of the present FIR in the Police Station Sadar Kapurthala on the next day on 21.03.2024 at 03:00 PM.

2. That the Petitioner has been named only in the statement of his maternal uncle Inderjit Singh who informed the police that the Petitioner is sitting in the Baleno Car along with co-accused Iqbal Singh. Even as per the case of the NCB the firing has been done from the licensed weapon of Iqbal Singh (co-accused) therefore no injury or role has been attributed to the Petitioner. It is the case of the NCB that at the time of this occurrence only the Petitioner and Iqbal Singh were present in Baleno Car bearing No. PB08DY6432 which belongs to Iqbal Singh.

3. That the case of the Petitioner is that the NCB Officials were in civil uniform when they come to conduct this raid and they were not accompanied by any police officials who were in uniform. This fact can be proved from the replies filed by both the States and the NCB and the Petitioner will demonstrate the same in the following paragraphs.

4. That in the present FIR, the complainant named everyone who is part of a police team namely SI Paramjit, SI Sonu Kumar, Constable Mukesh Kumar, Constable Vishal Pandey, Constable Mijan Tomar Biswari and also named the maternal uncle of the Petitioner namely Inderjit Singh and one person namely Vishal from the Courier Service but interestingly they do not name the two police officials of the local police chowki Kalan Sanghiyaan, who were accompanying them as per the FIR. Their name even did not surface in the first reply dated 10.07.2024 filed by the State of Punjab vide affidavit of Harpreet Singh, DSP, Sub Division, Kapurthala. It is further relevant to mention herein that the name of the two local police officials also did not surface in the first reply of the NCB dated 15.07.2024 filed in the present petition vide affidavit of Kuldeep Tomar, Intelligence Officer.

5. As per the procedure laid down in the eyes of law, the NCB Police Officiare were bound to inform the local police station and they are bound to register a DDR in regard to any operation or arrest they want to make in the jurisdiction of the local police station but they did not got any DDR registered in regard to their search in the jurisdiction of Police Station Sadar Kapurthala at the Police Station Sadar Kapurthala. It is only after the Petitioner raised this point that they were not accompanied by any local police station and they were mistakenly fired upon by the co-accused as the Petitioner as they were having threat and he got an FIR registered in the same police station 3 days back, the NCB in connivance with the Punjab Police got a forged DDR registered vide Report No. 12 dated 20.03.2024 at Police Post Kalan Sanghiyaan. Even as per the affidavit of the SSP, Kapurthala dated 02.10.2024, she has admitted in Para No.4 that the Roznamcha at the Police Chowki Kalan Sanghiyaan is a manual Roznamcha which is not attached to the CCTNS System. She has further stated that CCTNS System is running online daily in Police Stations of District Kapurthala but not in Police Post. It is further relevant to

mention herein that as per the Panjab Police Rules, 11.67, 11.68, 22.47, 22.48, the Roznamcha has to be a double paged Roznamcha and a vernacular copy of every DDR has to be sent to the Office of the Superintendent of Police and is to be kept by the Vernacular Copy Branch as record but the SSP in his affidavit is silent on the fact that this manual Roznamcha is not double paged or single paged or whether the vernacular copy of the DDR No. 12 dated 20.03.2024 is sent to the vernacular copy branch in accordance with the Punjab Police Rules, 1934 and the same is kept as part of record. This DDR which has come into existence after this occurrence is nothing but an attempt to rectify the shady investigation conducted by the Punjab Police in connivance with the NCB in order to falsely implicate the present Petitioner. That the NCB filed a second reply vide an affidavit dated 31.07.2024, in which they have attached the true translated copy of DDR No. 12 dated 20.03.2024 as Annexure R-1 and perusal of the same would reveal that it shows a time of 07:15 PM and further says that the complainant had a conversation with the Incharge Sarabjeet Singh in regard to the identification of the accused in the photoclip on mobile and for taking employees present at the police post for identification, on which ASI Lakhwinder Pal No. 908 and ASI Malkeer Singh No. 1147/Kapurthala were taken along.

6. It is pertinent to mention herein that the DDR names two Police Officials ASI Lakhwinder Singh and ASI Malkeet Singh and also SI Sarabjeet Singh who is an Incharge. All these police officials are very well known to the Petitioner and the co-accused as the FIR No. 29 dated 17.03.2024 which was registered by the Petitioner's cousin against the persons who wants to kill him and his brothers was registered by SI Sarabjeet Singh (Annexure P-3 Page 26) and ASI Lakhwinder Pal No. 908/Kapurthala was also named in the FIR registered by the Petitioner as a Member of the Team along with St Sarabjeet Singh (Annexure P-3 Page 26). This fact completely falsifies this DDR which is registered way after the occurrence just to help the NCB.

7. It is further relevant to mention herein that in the second reply dated 31.07.2024, the NCB also attached the 161 Statements of the police officials as per the DDR namely ASI Lakhwinderpal No. 908 and ASI Malkeet Singh NO. 1147/Kapurthala. The perusal of the statements would itself reveal that the same is only in regard to the recording the statement of Kuldeep Tomar on 21.03.2024. The Statements do not mention any occurrence or any independent observations or any independent statements in regard to the occurrence when this firing incident happened. It further do not show anything that where were these two police officials from 09:00 PM on 20.03.2024 to 3:00 PM on 21.03.2024. These statements itself proves that these two police officials were not present at the time of occurrence as do not independently corroborate the incident. Perusal of their statements would further reveal that it is only in regard to the statement of Kuldeep Singh Tomar which is his version in the FIR.”

5. 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.

6. The State’s counsel opposes bail and refers to the reply.
7. Dealing in 477 grams of opium is a punishable offense under the NDPS Act in the following terms:

Substance Name	"Opium"
Quantity detained	477 Gram
Quantity type	Intermediate
<i>Drug Quantity in % to upper limit of Intermediate</i>	19.08%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	92
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Opium
Other non-proprietary name	*****
Chemical Name	And any preparation containing opium
Small Quantity	25 Gram
Commercial Quantity	2500 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.18 & S.2(xv) NDPS Act, S.O.821(E)
dated	11/14/1985
Sr. No.	S.2(xv)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(xv) “opium” means— (a) the coagulated juice of the opium poppy; and (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent. of morphine; S.2 (xvii) “opium poppy” means— (a) the plant of the species Papaver somniferum L; and (b) the plant of any other species of Papaver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;

	Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.
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8. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

9. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity 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.

10. 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.

11. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1) (b)(ii) of the NDPS Act¹.

¹ Supreme Court of India, in Rabi Prakash v. The State of Odisha, SLP (Crl) 4169-2023, Para 4, decided on 13 July 2023

12. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, per paragraph 6 (x) of the bail petition, the petitioner has been in custody since 20.03.2024. 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.

13. 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.

14. 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.

15. 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)	

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

17. 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.

18. 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 elaborate 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.

19. 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.

20. This bail is conditional, and the foundational condition is that if the petitioner repeats the offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

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

22. 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.

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

(ANOOP CHITKARA)
JUDGE

19.12.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.