

CRM-M-28394-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28394-2024
Reserved on: 10.07.2024
Pronounced on: 16.07.2024

Jaspal Singh alias Pali ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashok Giri, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
22	02.03.2024	Division No.3, District Jalandhar	18 (Section 29/27A added later on) of NDPS Act 1985

1. The petitioner under arrest for violating the provisions as mentioned above of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail on the ground that the quantity of contraband is less than commercial and rigours of S. 37 of NDPS Act do not apply.
2. In paragraph 19 of the bail petition, the accused declares that he was involved in two cases, out of which, in one case he has been discharged and in one matter has been compromised.
3. Petitioner's counsel seeks bail on the grounds that contraband recovered from him falls in intermediate quantity. His next contention is that although there are two cases against the petitioner as mentioned in para 19 of the petition, but both cases have been closed, in which, in one he has been discharged and one matter was compromised, as such there is no criminal antecedents as on date. Petitioner’s counsel further seeks bail on parity with co-accused Bhupinder Singh, Sunny Sohal and Amarjit Kaur. He further prays for bail by imposing any stringent conditions including surrender of weapons. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

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4. The State opposes bail.

REASONING:

5. Facts of the case are being taken from reply dated 10.07.2024 filed by the Assistant Commissioner of Police (Detective) Jalandhar. On 02.03.2024, the investigator along with police officials were on patrolling in a government vehicle to search and detect crime and they were also carrying investigation kit and also a laptop, printer etc. When the police team reached at Damoria Bridge then they noticed one boy walking from the side of railway station, having black colour polythene in his hand. On noticing the police officials, he became perplexed and tried to turn back. This unusual way created suspicion in the mind of SI Jaswinder Singh and he inquired the boy. The said boy told his name Sunny Jagga and subsequently claimed to use the rights under Section 50 of NDPS Act and polythene bag was searched which lead to recovery of 2 kg opium (two packets, each containing 01 kg opium). Subsequently the said Sunny Jagga was arrested and interrogated. In the interrogation Sunny Jagga made two disclosure statements, in which he stated that he along with his brother Mani Kumar, his cousin brother Pawan Kumar and Nishant Bhagat, were sending opium out of India by concealing them in parcels. They used to receive opium from Amandeep, Sunil Kumar and Harmanpreet and one Suraj was also involved. They were also paying money to one Parmodh to get the couriers clear. After that the police nominated and recorded the statements of other accused persons and offence under Section 29 of NDPS Act was also added.

6. The petitioner's role is that he was providing addresses in America, Canada, England, Australia and New Zealand, where parcels containing opium were sent. Based on these allegations, petitioner was arrested on 26.03.2024. The investigation further revealed that petitioner was admitted in drug addiction Center in Himachal Pradesh for one year where he got in touch with Amandeep Singh and subsequently started dealing with narcotics with him. The evidence revealed that a massive amount of opium was transported by couriers with petitioner-Jaspal Singh.

7. An analysis of the above said arguments would lead to the following outcome.

8. As per prosecution's case initial recovery of 2 kg opium was from Sunny Jagga. During the investigation of Sunny Jagga, the investigator came to know about massive drug cartel involved in sending drug abroad by concealing them in couriers. Although the investigation based on disclosure statement points out that in more than 22 kg was transported by co-accused out of India which falls in commercial quantity but as far as

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present case is concerned recovery of 2kg of opium is involved which falls in intermediate quantity, as such Section 37 of NDPS Act will not apply in the present case. It would be appropriate to refer to reply dated 10.07.2024, which mentions the role of the petitioner and evidence against him, which reads as follows:-

“Role of the Petitioner

13. That it is respectfully submitted that role of the petitioner is that he used to provide the addresses of America, Canada, England, Australia, New Zealand, where courier parcels of opium were sent. The petitioner was arrested in this case on 26.03.2024 and since then he is in judicial custody.

Evidence against the Petitioner

14. That during the period police remand, the petitioner disclosed that he was admitted in drug addiction center at Himachal Pradesh where he stayed for about 01 year and where he acquainted with Amandeep son of Vijay Kumar resident of street no.1, House No. 8, Gautam Nagar, Hoshiarpur. In October 2023, Amandeep got love marriage against the wishes of his parents and his parents threw him out from the house. Then Amandeep informed to make arrange for a suitable place and then he got arranged a flat on rent for Amandeep through a dealer near haveli, who started living there. On which after a few days Amandeep met him and he told him that he is working in smuggling of opium through parcels. If he know someone who is interested to take opium, then let him know the address and he will send the parcel, in this regard he will get Rs. 50000/- for each parcel. On which the petitioner used to provide the address through his acquaintances Bittu resident of Garhdiwal, District Hoshiarpur and Munish Kumar alias Mani Thakur son of Madan Lal resident of house no. 197, near Baba Lal Dayal Mandir, Dilbagh Nagar Jalandhar at present resident of England and gave it to Amandeep and Amandeep used to send it through delivery parcel. Munish Kumar alias Mani Thakur, resident of England, who used to send money to Amit Kumar Shukla of Phagwara and he used to take money of 2/3 parcels together from Amandeep. From October 2023 to February 2024, about 15/16 parcels have been delivered by Amandeep to England. As per Amandeep, one kilogram Opium was contained in each parcel. He alongwith Amandeep used to deliver parcels to England.”

9. An analysis of the reply also points out that petitioner’s role is similar to the co-accused Bhupinder Singh, Sunny Sohal and Amarjit Kaur, who were granted bail by Coordinate Bench of this Court vide orders dated 10.04.2024 passed in CRM-M-15794-2024, 29.05.2024 in CRM-M-21511-2024 and 29.05.2024 in CRM-M-21505-2024 respectively. Given above and considering the facts of the case and other circumstances peculiar to this case, further pre-trial custody may not be justified at this stage.

10. Given this, the rigours of S. 37 of the NDPS Act do not apply in the present case.

11. 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 offense regular statutes.

12. 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.

13. In *Gurbaksh Singh Sibbia v State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. Also, there is the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor* (1978) 1 SCC 240, (Para 16), the

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Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, the Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, **2018:INSC:107 [Para 7]**, (2018) 3 SCC 22, (Para 6), the Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the bail grant ought not to be so strict as to be incapable of compliance, thereby making the bail grant illusory.

14. 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.

15. 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, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973. This order shall come into force from the time it is uploaded on the official webpage of this Court.

16. In *Madhu Tanwar and Anr. v. State of Punjab*, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence

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to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

17. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/-); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the similar amount.

(c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail order.

(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

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1.	AADHAR number	
2.	Passport number, (If available), when the attesting officer/court thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

18. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the police, or the court, or to tamper with the evidence.

19. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

20. 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 offence.

21. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated

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in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

22. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the society. 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."

23. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

24. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

25. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

26. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the

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Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

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

28. In return for protection from further incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

29. *There would be no need for a certified copy of this order 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. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

16.07.2024
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Whether speaking/reasoned:	Yes
Whether reportable:	No.