CRM-M-28779-2024

26 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M No.28779 of -2024
Reserved on: 16.07.2024
Pronounced on: 30.07.2024

Parmod Kumar **...Petitioner**

Versus

State of Punjab **…Respondent**

CORAM: **HON'BLE MR. JUSTICE ANOOP CHITKARA**

Present: Mr. J.S. Lalli, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
22	02.03.2024	Division No.3, District Jalandhar	18, 27A, 29 of NDPS Act 1985

1. The petitioner, under arrest for violating the provisions of the 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 the rigors of S. 37 of the NDPS Act do not apply.

2. In paragraph 6 of the bail petition, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	58	18.03.2024	Under sections 18 and 27 of NDPS Act	Division No.8, Police Commissionerate, Jalandhar

3. The facts of the case are being taken from reply dated 15.07.2024 and the relevant paragraph(s) of the same 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 is having doubt of some narcotic substance which is lying in the black colour polythene in your right hand but you are having right to conduct the search of black polythene in your right hand from Magistrate or from Gazetted Officer and they can be called on the spot where the above said Sunny Jagga replied that I have trusts upon 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 Gaur Shankar 1905. Before conducting the search of black polythene in the right hand of nabbed Sunny Jagg 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 AIRDRIEAIRORIE, 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 2 polythene packet of 1 kg each. The recovered packets were placed in the same polythene and then put the same into the separate plastic boxes and thus prepared two separate parcels of the case property. The parcels of case property were marked as Mark A and Mark B. The recovered cardboard box meant for courier were put into the cloth parcel and the sweets box of laddu was put into another plastic box and thus prepared two separate parcels.

8. That SI Jaswinder Singh sealed the above said four parcels containing the case property with seal impression "JS". Sample seal has been prepared separately. The stamp after use was handed over to ASI Nitin Sharma. Then the parcels containing (01/01 Kg) as well as the case property of cardboard box meant for courier which is in the cloth parcel and case property sweets laddu contained in the separate parcel of plastic box which are duly sealed with stamp JS have been taken into police custody as proof of evidence through separate memos.

9. That the above said Sunny Jagga was failed to produce any license or permit for keeping the 2 Kg of opium and the writing was sent to C. Mandeep Singh to the police station for the registration of FIR.

10. That as consequence thereof, present FIR was initially registered under section 18/61/85 of NDPS Act at Police Station Division No.3 Jalandhar against the above said Sunny Jagga. During investigation, accused Sunny Jagga suffered two disclosure statements to the effect that he alongwith his brother Mani Kumar, his cousin brother Pawan Kumar and Nishant Bhagat, used to send Opium abroad under the garb of parcels. Amandeep, Sunil Kumar and Harmanpreet used to supply opium to them and where they were to supply the opium, was told to them by Suraj and Amandeep. For clearing the courier Nishant Bhagat used to give money to Parmod (Petitioner). On the basis of disclosure statement of accused Sunny Jagga, Manni Kumar, Pawan Kumar, Nishant Bhagat, Parmod Kumar (Petitioner), Amandeep, Sunil and Harmanpreet were nominated in the present case vide DDR No.47 dated 02.03.2024 and offence under Section 29 of NDPS Act was added. Out of seven nominated persons, the petitioner was arrested on 03.03.2024 and he also made disclosure statement naming Pawan Kumar, Manni Kumar, Sushil Kumar @ Suraj, and Amandeep Singh who were also nominated in the above said case."

4. Petitioner's counsel seeks bail because contraband recovered from him falls in intermediate quantity. The 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 stringent conditions, including surrendering weapons. The petitioner contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State opposes bail and in support thereof, has referred to relevant paragraph(s) of the reply which reads as under:

"11. That during investigation, the petitioner was arrested in this case on 03.03.2024 and since then he is in custody. During investigation he suffered disclosure statement which is reproduced as under:

> *"I am working at ITO Mata Sundari Road, Delhi near Foreign Post Office for dispatching the parcels. Pawan Kumar son of Jagdish Kumar resident of House No. 3483, Bhargo Camp, Jalandhar, Mani Kumar son of Harish Chandra resident of C-61, Leather Complex Road, New Rajan Nagar, Jalandhar, Sushil Kumar alias Suraj son of Ramesh Kumar resident of Mohalla Gobind Nagar, Darapur Bypass Tanda, District Hoshiarpur, who are doing the business of supplying opium through courier to Canada, America, England, Australia, New Zealand, etc. They took my help to forward their courier parcels from Delhi. They used to tell me that their courier parcels are coming, so I immediately contact the employees of customs department Rukesh Sharma, Amit Sharma, Rahul Jain, Pushpinder Jain in Foreign Post Office, ITO Mata Sundari Road, Delhi. The said persons used to pass the parcels from Delhi Airport. For this purpose, Pawan,*

> *Amandeep and Sushil Kumar used to give money through UPI and I kept my share and gave rest of the amount to employees of customs department. In this way, our business runs smoothly without any hindrance and we get handsome income."*

12. That during investigation, other accused persons were nominated and later on 12 accused persons stood arrested in the present case and around 21 kg of Opium and four vehicles were recovered from them.

13. That during further investigation, accused Amandeep was arrested in this case on 05.03.2024 and during interrogation, accused Amandeep suffered disclosure statement and on the basis of his disclosure statement, accused Amarjit Kaur was nominated in this case. The accused Amandeep has disclosed in his disclosure statement that Munish Kumar alias Mani Thakur who currently lives abroad in England and who used to supply opium from Jharkhand. He used to supply opium to Sunil Kumar alias Suraj Kumar r/o Bobby Nagar, Tanda. Thereupon, Sunil Kumar alias Suraj, Pawan Kumar, Nishant Bhagat, Sunny Jagga and Sikandar used to supply the same through courier service to Parmod Kumar (Petitioner). The Petitioner used to clear said parcel at Airport with the help of Rupesh Sharma, Amit Sharma, Rahul Jain and Pushpinder Jain, who were working in Custom Department and their posting is at Foreign Post Office, ITO, Mata Sundari Road, Delhi. In this process, accused Pawan Kumar, Mani Kumar son of Harish Kumar r/o C-61, Leather Complex Road, New Rajan Nagar, Jalandhar, Nishant Bhagat resident of Bhargo Camp, Jalandhar, Sunny Jagga son of Harish Kumar resident of C-61, Leather Complex Road, New Rajan Nagar Jalandhar and Sikandar son of Late Vijay Kumar resident of House No. WS-55, Satra Mohalla, Basti Shiekh, Jalandhar are also involved. After that said parcels were supplied to the addresses disclosed by Manish Kumar alias Manni Thakur.

14. That the accused Amandeep Singh further disclosed that Munish Kumar @ Mani Thakur used to make payment for his work through his girlfriend Amarjit Kaur wife of Jorawar Singh daughter of Harjinder Singh resident of village Sangal Sohal, District Jalandhar from the last year i.e. since November 2023. Munish Kumar @Mani Thakur used to send money through various means to Amarjit Kaur and Amarjit Kaur comes in her car THAR vehicle number PB08-EY-5674 and gave it to different places by calling him. Sometimes she gave 02 lakhs, sometimes 03 lakhs on different times. In this way, Amarjit Kaur had made payment of about rupees 16/17 lacs to him. Amarjit Kaur herself drives her THAR vehicle. Most of the times Amarjit Kaur herself used to make the payment, but sometimes her brother Sunny Sohal used to make said payment to him. Amarjit Kaur and Sunny Sohal had full knowledge about smuggling of Opium. Amarjit Kaur and Sunny Sohal had been managing the drug money as Manish Kumar used to send the entire drug money to Amarjit Kaur. Both accused Sunny Sohal and his sister Amarjeet Kaur used to save profit income from the said business of smuggling of opium. Sometimes Munish Kumar sent money to Amit Kumar son of Mahinderpal Shukla resident of House No. 202, Guru Harkrishna Nagar, Banga Road, Phagwara, District Kapurthala by way of Hawala (money laundering) business and Amarjit Kaur used to give this money to him and sometimes he himself brought money from Amit Kumar. Amarjit Kaur distributes the money sent by Munish Kumar and keeps the rest as per his dictates. Only Amarjit Kaur can tell about the money which she keeps, where she spends it and how much money she gives to her brother Sunny

Sohal. Only Amarjit Kaur knows about it. On the basis of disclosure statement of accused Amandeep, accused Amarjit Kaur and her brother Sunny Sohal were nominated in the present case vide DDR No.05 dated 05.03.2024. Thereupon, Amarjit Kaur and Sunny Sohal were arrested on 06.03.2024.

15. That the co-accused Amarjit Kaur is stated to be king pin of the drug racket as she used to make payment to the accused Amandeep who used to further distribute the same amongst other members of the gang. However, from source information this fact has came into light that the co-accused Amarjit Kaur has purchased a Mahindra Thar from the said drug money. As the per the disclosure statement of co-accused Amarjit Kaur dated 06.03.2024 she has disclosed that Amandeep and his partners used to supply opium on the address specified by Munish Kumar and the income extract from said drug money, Munish Kumar used to pay the same to co-accused Amarjit Kaur through hawala and she used to distribute the said money to Amandeep on going on her Mahindra Thar bearing number PB08-EY-5674. The co-accused Amarjit Kaur has further disclosed in her disclosure statement that she used to pay a sum of Rs. 2 Lacs or some times 3 Lacs at different place and at different time to Amandeep and she has paid a total sum of Rs. 16/17 Lacs. Sometimes, co-accused Amarjit Kaur herself drive her Mahindra Thar car while some time his brother Sunny Sohal used to make payment to Amandeep. The co-accused Sunny Sohal and his sister Amarjit Kaur are having full knowledge of this illicit trade and drug money."

6. As per prosecution story, on 02.03.2024, the investigator, along with police officials, were patrolling in a government vehicle to search and detect crime, and they were also carrying an investigation kit and also a laptop, a printer, etc. When the police team reached Damoria Bridge, they noticed one boy walking from the side of the railway station with black color 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 from the boy. The said boy told his name as Sunny Jagga and subsequently claimed to use the rights under Section 50 of the NDPS Act. The polythene bag was searched, which led to the 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 one Parmodh to get the couriers cleared. After that, the police nominated other accused persons, and an offense under Section 29 of the NDPS Act was also added.

7. Analyzing the arguments above would lead to the following outcome.

8. As per the prosecution's case, the initial recovery of 2 kg of opium was from Sunny Jagga. During the investigation of Sunny Jagga, the investigator came to know about a massive drug cartel involved in sending drugs abroad by concealing them in couriers. Although the investigation based on the disclosure statement points out that more than 21 kg of opium was transported by co-accused out of India, which falls in commercial quantity as far as the 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 the reply dated 15.07.2024, which mentions the role of the petitioner and evidence against him, which reads as follows:-

> ***"Role of the Petitioner***
> *19. That the role of the petitioner is that he used to clear the parcels of Opium at Airport for delivery across the country. Regarding which, the accused Mani Kumar, Sikander Kumar and Sushil Kumar @ Suraj @ Sujal Mehra used to deposit money through UPI in the bank account of the petitioner on different intervals. Copies of details of money/ amount depositedin the bank account of the petitioner by the accused Mani Kumar, Sikander Kumar and Sushil Kumar @ Suraj @ Sujal Mehra are annexed herewith as Annexure: R-1/T, R-2/T and R-3/T, respectively. Whereas, the co-accused Mani Kumar, Nishant and Jagdish Kumar also deposited amount/money in the bank account of Rinki, who is sister of the petitioner. Copies of details of the same is annexed herewith as* ***Annexure:R-4/T, R-5/T & R-6/T****."*

9. An analysis of the reply also points out that the 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 the 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 rigors 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 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. As per paragraph 4 of the bail petition, the petitioner has been in custody since 03.03.2024. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie 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.

14. 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.

15. 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.

16. 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)	

17. 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.

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 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.

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 restrain the accused from influencing the witnesses and repeating the offence.

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

21. 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.

22. 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.