

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31414-2024
Reserved on: 08.08.2024
Pronounced on: 30.08.2024

Sukhchain Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
60	19.05.2022	Lakho ke Behram District Ferozepur, Punjab	15, 22, 25, 29 of NDPS Act

1. The petitioner aged 76 years, incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report dated 06.08.2024 filed by concerned DySP, which reads as follows:-

“3. That in compliance to the said order, it is most respectfully submitted that FIR No.60 dated 19.05.2022 u/s 15/22/25/61/85 NDPS Act, Police Station Lakho Ke Behram, was registered against Gurkitan Singh son of Dilbagh Singh alias Darbara Singh, r/o Basti Shame Wali, Dakhli vllage Joge Wala, PS:Makhu, Kulwant Singh son of Satwant Singh, r/o Nizami Wala, PS:Makhu and Nirvair Singh son of Harbel Singh, r/o Basti Shame Wali, Dakhli Joge Wala, District Ferozepur on the basis of secret information on 19.05.2022. Thereafter, in pursuance of the secret information, Gurkirtan Singh and Kulwant Singh were apprehended by the police party while coming on Trolla bearing registration No.PB-05-AB-8049 and on search of the vehicle, recovery of 140 Kg. Poppy pods and 50000 intoxicating tablets of Tramadol HCL SR 100 mg. was

made in the presence of Gazetted officer Shri Arun Mundan, PPS, DSP(NDPS). While effecting the recovery, the Police party has complied with all the requisite provisions of NDPS Act.

4. That during investigation of the case, it was found that the vehicle bearing registration no.PB-05AB-8049 is the ownership of petitioner Sukhchain Singh. Thus vide GD no.022 dated 20.10.2022, petitioner was nominated as accused in this case.”

4. The petitioner's counsel submits that from the bare perusal of the FIR it becomes clear that the petitioner has not been named in the present FIR, neither the petitioner has been apprehended at the spot, neither the petitioner was present at the spot, neither is the case that petitioner ran away from the spot and nothing has been recovered from the petitioner. In the present case petitioner has been roped in the present case on the basis of disclouser statement of co-accused and the same is not admissible under the law. Counsel for the petitioner further submits that the petitioner who is more than 76 years of age has been nominated in the present case being the owner of the trolla vehicle and apart from this no other allegations or evidence is there against the petitioner.

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. It would be appropriate to refer to the following portions of the reply, which read as follows:-

“9. That so far as the role of the petitioner is concerned, the vehicle from where the huge quantity of poppy ponds as well as intoxicant tablets were recovered, the same was registered in the name of the petitioner and as such he along with co-accused indulged in selling narcotic contraband.”

8. 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.

9. The recovery was not from the petitioner but from the vehicle registered in the petitioner’s name. To satisfy the rigors of S. 37 of the NDPS Act, it is not the prosecution’s case that the petitioner was also traveling with the vehicle to escort the contraband or involved in it, and there is no convincing evidence of the petitioner’s dealings in the contraband recovered from the main accused.

10. For now, the petitioner 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.

11. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

- (a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [*Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Para 6].
- (b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [*Customs, New Delhi v. AhmadalievaNodira*, (2004) 3 SCC 549, Para 7].
- (c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [*UOI v. Prateek Shukla*, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].
- (d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [*Union of India v. Niyazuddin SK &Anr*, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].
- (e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [*N.R. Mon v. Md. Nasimuddin*, (2008) 6 SCC 721, Para 9].
- (f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [*Customs, New Delhi v. Ahmadalieva Nodira*, (2004) 3 SCC 549, Para 7].
- (g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are

sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[31]. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified

categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

12. In addition to the above reasoning, there is another ground on which the petitioner deserves to be released on bail: the petitioner's age, which is seventy-six.

13. As per the latest World Development Indicators, the life expectancy at birth for an Indian resident averages 69.887 years. Prison Statistics India 2020, compiled by the National Crime Records Bureau (Ministry of Home Affairs), Government of India, reveals that very few States provide special treatment or facilities for old age prisoners. Justice is not a plain and simple concept; it is muddled with complexities and requires adequate consideration of various factors. 'Age,' as a consideration, has always assumed significant importance in our Criminal Justice system. An older adult is stricken with degenerative physiological changes, cognitive decline, problems in dexterity and mobility, and is burdened with increased dependency. Such individuals, who belong to a higher age bracket, usually tend to require extra support and assistance, even to manage menial tasks of daily living, including but not limited to self-care. Even a minor health issue in late life has the potential to turn into a life-threatening catastrophe. Prison systems, mostly everywhere, are riddled with certain prejudices and may be inept in dealing with such grave contingencies immediately. The inherent stressors that plague our prison systems may negatively impact the quality of life and add unnecessary and substantial distress to both the physical and psychological well-being of an octogenarian. Though sentencing policies are based on deterrence and retribution, their ultimate objective is reformation to establish a healthy and civil society. All these goals fall short while dealing with a person already standing on his last legs, which is a harsh but ultimate truth and garners respect and compassion on these core humanitarian grounds.

14. Given the above, coupled with the prima facie analysis of the evidence against the petitioner and the other factors peculiar to this case, there would be no justifiability of further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

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. This order shall come into force from the time it is uploaded on this Court's official webpage.

16. 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.

17. 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)	

18. 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.

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, 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.

20. 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

CRM-M-31414-2024

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.”

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

30.08.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: YES.