

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-31650-2024  
Reserved on: 16.10.2024  
Pronounced on: 22.10.2024

Gurpreet Singh @ Gopi @ Kaka ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Abhilasha Kainth, Advocate for  
Mr. B.S. Bhalla, Advocate  
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                  | Sections                                                         |
|---------|------------|---------------------------------|------------------------------------------------------------------|
| 183     | 19.08.2022 | STF, District SAS Nagar, Mohali | 21-C of the NDPS Act (Section 29 of the NDPS Act added later on) |

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. Per paragraph 22 of the bail application and per paragraph 8 of the status report filed by the State, the accused has the following criminal antecedents:

| Sr. No. | FIR No. | Dated      | Offences              | Police Station |
|---------|---------|------------|-----------------------|----------------|
| 1       | 82      | 12.06.2022 | 21/29 of the NDPS Act | Sadar Batala   |

3. The facts and allegations are taken from the translated copy of FIR, referred to in para 1 of the bail petition. On Aug 19, 2022, based on prior secret information, the Police seized 280 grams of heroin from the co-accused Gurjeet Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. During the custodial interrogation of the accused Gurjeet Singh, he disclosed the petitioner as the supplier of the heroin; based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.
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 petitioner's counsel submits instructions that the petitioner shall attend the trial on every date, and he shall surrender his passport.
6. The State's counsel opposes bail and refers to the status report.
7. Dealing in 280 grams of heroin is a punishable offense under the NDPS Act in the following terms:

|                                                   |                                    |
|---------------------------------------------------|------------------------------------|
| Substance Name                                    | Heroin/ Chitta/ Smack/ Brown Sugar |
| Quantity detained                                 | 280 Gram                           |
| Quantity type                                     | Commercial                         |
| Drug Quantity in % to upper limit of Intermediate | 112.00%                            |

|                                                                                                               |                  |
|---------------------------------------------------------------------------------------------------------------|------------------|
| Specified as small & Commercial in S.2(viia) & 2(xxiiia) NDPS Act, 1985                                       |                  |
| Notification No                                                                                               | S.O.1055(E)      |
| dated                                                                                                         | 10/19/2001       |
| Sr. No.                                                                                                       | 56               |
| Common Name<br>(Name of Narcotic Drug and Psychotropic Substance<br>(International non-proprietary name (INN) | Heroin           |
| Other non-proprietary name                                                                                    | *****            |
| Chemical Name                                                                                                 | Diacetylmorphine |
| Small Quantity                                                                                                | 5 Gram           |
| Commercial Quantity                                                                                           | 250 Gram         |

|                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Notification No                                                                                               | S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| dated                                                                                                         | 11/14/1985                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Sr. No.                                                                                                       | 2(xvi)(d)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Common Name<br>(Name of Narcotic Drug and Psychotropic Substance<br>(International non-proprietary name (INN) | *****                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Other non-proprietary name                                                                                    | *****                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Chemical Name                                                                                                 | 2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts;<br><br>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 mililitre of substance, if liquid, is contained in every one hundred mililitre 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. 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. 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.

[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.

10. It would be appropriate to refer to the following portions of the status report, which read as follows:

“5. That recovery of 280 gm was effected from co-accused Gurjeet Singh in the present FIR. That during investigation co-accused Gurjeet Singh got recorded his disclosure statement, dated 22.08.2022, upon which the present petitioner was arrayed as accused in FIR 183(supra). That the accused Gurjeet Singh stated in his aforesaid disclosure statement that the recovered Heroin had been procured by him from the present petitioner and that he used to procure the Heroin from him on earlier occasions also.”

11. In *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

12. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband. No other evidence is collected at this stage to connect the petitioner with the main accused. Thus, there is no justification to deny bail. Consequently, the petitioner has satisfied the first rider of section 37 of the NDPS Act. 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.

13. 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.

14. However, the main issue is the petitioner's conduct when he had tried to flee and was caught in Delhi International Airport. It would be appropriate to refer to the following portions of the reply, which read as follows:

*“6. That the present petitioner, who had earlier been declared as Proclaimed Offender, in furtherance of efforts to arrest him, a Look Out Circular was got issued in his name on 29.12.2023. Thereafter the petitioner was arrested on 13.03.2024 from the Indira Gandhi International Airport, New Delhi.*

15. Although there is ample evidence of the petitioner's conduct, considering the quality of evidence and the slow speed of the trial, whereas the petitioner's counsel, only one witness has been examined, the petitioner can be released on bail only when he assures to attend the trial without a miss.

16. As per paragraph 6 of the reply, the petitioner was arrested on 13-03-2024. Given the penal provisions invoked viz-a-viz the quality of evidence, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

17. 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.

18. 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.

19. 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)                                                                                                             |  |

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

21. 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.

22. The petitioner is directed to surrender his passport within seven days of his release from prison if it has not already been seized. The petitioner is directed to attend the trial on every date and not to leave India during its pendency.

23. 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.

24. 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 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."

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

26. 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.

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

(ANOOP CHITKARA)  
JUDGE

22.10.2024  
Jyoti Sharma

Whether speaking/reasoned: Yes  
Whether reportable: No.