

CRM-M-32916-2024
CRM-M-32861-2024
CRM-M-32746-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32916-2024
Reserved on: 05.11.2024
Pronounced on: 12.11.2024

Sarban Singh @ Sony and others ...Petitioners

Versus

State of Punjab and others ...Respondents

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Vishal Singh ...Petitioner

Versus

State of Punjab ...Respondent

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Sarban Singh @ Sony ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Aditya Anand, Advocate
for the petitioner(s).

Mr. Sukhdev Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
59	09.05.2024	Sadar Kapurthala	21 (c) of NDPS Act, 1985

1. Petitioner along with co-accused who are incarcerated in the FIR captioned above on the allegations of recovery of 260 grams of Heroin from their vehicle have come up before this Court by filing two separate bail petitions and one quashing petition on the allegations of false implication. For brevity, facts are taken from CRM-M No.32916 of 2024 as common question of facts and law is involved.

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2. Facts of the case are being taken from FIR, the translated copy of which is annexed with the petition. As per prosecution case on 09.05.2024 at 7 PM, a police party equipped with their kit were patrolling the areas including village Lakhan Kalan where the petitioners reside. On reaching t-point towards village Lakhan Kalan, the Investigator claims to have spotted a white colour XUV car parked on the road side. On noticing the police party, the driver of the car attempted to escape, however he was apprehended. The said person revealed his name as Sarban Singh No.1. As per prosecution case, in an attempt to flee, Sarban Singh fell down and allegedly received injuries on his ear. The person sitting next to the driver seat revealed his name as Gurpreet Singh- petitioner No.3. There was another person who revealed his name as Vishal Singh- petitioner No.2. On the back of the seat, the police noticed a polythene bag. Consequently Gazetted Officer was called at the spot. On reaching the spot, SI Labh Singh conducted the search of the vehicle which led to recovery of 260 grams of Heroin. In the quashing petition filed by petitioner- Sarban, it has been alleged that the police has lodged a false case. It would be appropriate to refer to paras no.4,5 and 6 of the quashing petition which reads as follows:-

“4. That the sequence of events as narrated in the preceding paragraph are nothing but a figment of imagination scripted by respondents No.4 to 13 and as such make the FIR wholly unreliable and untrustworthy. It is humbly submitted that on 08.05.2024, petitioners No.2 and 3 were already in the custody of CIA Staff, Kapurthala. Then at about 9:25 P.M. officials of CIA Staff, Kapurthala took petitioner No.2 along- with them to Village-Boot, District-Kapurthala, in civil dress with the intention of nabbing petitioner No.1 from his sister's house. Petitioner No.1 was taken into custody by the police officials. Thereafter, both petitioners No.1 and 2 were taken away from the spot in the car belonging to the police. After some time, respondent No.6 along with the other police officials returned to the spot, reversed the XUV car, belonging to petitioner No.1, bearing No. PB08-EP-2555 and drove away. On 09.05.2024, as per the version narrated in the FIR, the contraband is stated to have been recovered from the said car.

5. That the averments made in the preceding paragraph derive their weightage based on a CCTV footage dated 08.05.2024, captured on the camera situated at a local shop. Perusal of the CCTV footage makes the version narrated in the FIR incongruous to accept. The occurrence dated 08.05.2024 lasted from approximately 09:27 P.M to 09:40 P.M. The relevant time along with the specific acts of the police officials are enumerated hereinbelow for the convenience of this Hon'ble Court: -

A) 09:27:44 P.M dated 08.05.2024 Officials of CIA Staff, Kapurthala can be seen arriving at the spot along with petitioner No.2, who was already in illegal

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custody.

(B) 09:30:46 P.M dated 08.05.2024 Petitioners No.1 is taken into custody from his sister's house. Both petitioners No.1 and 2 can be seen in custody being taken towards the police car.

(C) 09:31:29 P.M dated 08.05.2024 - The car belonging to the Police can be clearly seen in which petitioners No.1 and 2 were taken away.

(D) 09:39:48 P.M dated 08.05.2024 The Police Officials can be seen reversing the XUV car, belonging to petitioner No.1, bearing No. PB08-EP-2555. The said car was driven away by the police and as per the FIR, on the next day i.e. 09.05.2024, the contraband is stated to have been recovered from the back seat of above-mentioned car.

Copies of the CCTV footage (in the shape of a pen drive) along-with relevant photographs dated 08.05.2024 are annexed as the ANNEXURE P2 and P3/A to P3/D respectively.

6. That it is not out of place to mention here that an attempt was made by the police officials to destroy the CCTV footage, upon attaining the knowledge its existence. The DVR was taken away by the them, however, the footage was recovered from the cloud database. In order to protect the sanctity/genuineness of the CCTV footage, the petitioners have approached the Learned Judge Special Court, Kapurthala for preservation of the CCTV footage dated 08.05.2024 vide application bearing No. CRM/272/2024. Notice has been issued in the said application vide order dated 13.06.2024. Copy of the application for preservation dated 12.06.2024 and the order dated 13.06.2024 along with case status are annexed as ANNEXURE P4 and P5 respectively.”

3. On the directions of this Court, para wise reply has been filed by State. In reply, preliminary submissions have been made and it would be appropriate to extract preliminary submissions mentioned in paras no.4,5 and 6 which reads as follows:-

“4. That FIR No. 59 dated 09.05.2024 was registered under Section 21-C, NDPS Act on the complaint of SI Labh Singh 212/JAL-R against 1) Sarban Singh @ Soni, 2) Gurpreet Singh and 3) Vishal Singh @ Sonu.

That the facts of the above said FIR are not reproduced for the sake of brevity as well as repetition.

That in regard to the allegations leveled in the present petition, which claimed that the accused were wrongfully picked up from village Boot and were wrongly shown to be arrested from

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Village Lakhan Kalan (as stated in the FIR), it is submitted that the said allegations are false and misleading. That the deponent directed the Supervisory Committee headed by Superintendent of Police (Operations) to examine the allegations in detail and after watching the video as well as analyzing the police file, a report No. 86-R/SP-ORT dated 05.08.2024 has been submitted by the said committee before the deponent, while rejecting all the allegations in the petition, as the petitioners have failed to bring on record any material evidence which can prove the allegations being leveled by them.

5. That it has been mentioned in the report by the Supervisory Committee, that on the perusal of the CCTV Footage, it can be seen that a White Color Scorpio Car with a beacon light, whose number cannot be read from the CCTV Footage, is seen entering the streets of the village at 09:31:26 PM of the footage. That it is further submitted that various individuals are seen in the CCTV footage and all of sudden a Scorpio car comes out from the street and is just crossing the street. Thereafter, the car crosses and the crowd disperse after some minutes and the white Scorpio Car cannot be seen again in the CCTV Footage which has been provided to the police party by the petitioners. That it is pertinent to mention here that without the report of the FSL, the committee cannot comment if the car seen in the video belongs to Kapurthala Police.

That the report of the Supervisory Committee has already been annexed as Annexure R-I, in the previous affidavit filed by the deponent before this Hon'ble Court.

6. That thereafter, at 09:39:10 PM, a white color car make XUV 500, is seen coming in reverse towards the shop/CCTV camera. That the number of the vehicle is not legible in the footage. That on the bare perusal of the CCTV footage, nothing as alleged in the petition in regard to the illegal arrest of the petitioners can be seen. The white color car make XUV 500, can be seen for barely 50 seconds in the footage where it is only visible that the car is reversing in the street. There is not even a single iota of evidence in the video which shows that any individual was forcefully taken away by the police at any point of time in the video.

However, in order to clarify, whether the car is the same one as mentioned in the petition, the CCTV footage has been sent vide road No. 189/21 dated 13.09.2024 to the FSL, Mohali for further clarification and clear the air in regard to the allegations in the petition.”

4. In addition to that, it would be appropriate to extract paras no.4,5 and 6 of the reply on merits which reads as follows:-

“4. That the contents of Para No. 4 of the petition are wrong and denied. The police party reached near T-Point Lakhan Kalan and saw a white XUV vehicle with number PB-08-EP-2555 standing on the side of the road, and when the driver of this car saw the police party's vehicle coming towards his car he

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immediately started to speed away. That thereafter, the accused were apprehended after the efforts of the police party. That further the police party conducted their personal search and also search of their vehicle under the supervision of Deputy Superintendent of Police, (Investigation), Kapurthala in compliance of Section 50 NDPS Act and further complied with all the necessary provisions of NDPS Act. That in the search a 260-gram heroin, an electronic weighing scale and some empty polythene were recovered and sealed with the stamp of the investigation. Thus, the present FIR No. 59 (Supra) was registered in accordance with law and the petitioners have rightly been arrayed as accused. That the time period mentioned in the para has been examined by the Supervisory Committee during the inquiry of the allegations leveled in the petition and on examination of the video footage nothing material has come on record as explained in the preliminary submissions.

5. That the contents of Para No. 5 of the petition are wrong and denied. That the pen-drive provided by the petitioner has been examined by the investigating agency and the following points have come on record:

i. That the contents of this para are specific denied as nothing can be seen in the video of CCTV where it can be seen that the petitioner/accused have been forcefully taken by any of the police official. Other than this, a White Color Scorpio Car with a beacon light, whose number cannot be read from the CCTV Footage, is seen entering the streets of the village at 09:31:26 PM of the footage.

It is pertinent to mention here that there is no footage which shows that any of the individual from the General public was taken by force or made to sit in the car Scorpio by force as alleged in the petition. Therefore, in absence of visible number plate of the car or the visibility the committee cannot conclude or suggest that the said car was of Kapurthala police.

ii. That the contents of this para are denied, there is nothing in the CCTV video supplied by the petitioner in this petition which proves, the allegation of manhandling or taking away the accused/petitioner as explained in this para of the petition.

iii. That the contents of this para are wrong and denied. It is pertinent to mention here that a police car with beacon light on its roof can be seen, however, the number of the car cannot be read in the video, therefore, no material has come on record which supports the version of the petitioner in this para. However, the video have been sent for FSL vide Road No. 189/21 dated 13.09.2024, so that more detailed report can be procured and in case any material evidence comes on record then further action be taken in accordance to the same.

That the police party and the police personnel as alleged in the petition were all present at different locations on 08.05.2024 i.e. the date on which the petitioner alleged that he was wrongfully

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arrested. Therefore, it is not possible that he was taken into police custody on 08.05.2024.

It is further submitted that only a gathering can be seen, and all of sudden a Scorpio car comes out from the street and is just crossing the street. Thereafter, the car crosses and the crowd disperse after some minutes. That it is further submitted by the committee that the white Scorpio Car cannot be seen again in the CCTV Footage which has been provided to the police party by the petitioners.

iv. That the contents of this para are wrong and denied. It is submitted that at 09:39:10 PM, a white color car make XUV 500, is seen coming in reverse towards the shop/CCTV camera. That the number of the vehicle is not legible in the footage. That on the bare perusal of the CCTV footage, nothing as alleged in the petition in regard to the illegal arrest of the petitioner can be seen. The white color car make XUV 500, can be seen for barely 50 seconds in the footage where it is only visible that the car is reversing in the street and it is not at all visible that if any police official is driving the same. There is not even a single iota of evidence in the video which shows that any individual or the car XUV 500 was forcefully taken away by the police at any point of time in the video.

6. That the contents of Para No. 6 of the petition are wrong and denied. That the DVR was never taken away by the police and neither any attempt was made to tamper with the evidence of the case. That the remaining contents of this para are a matter of record and thus, need no reply."

5. Perusal of the allegations made in the petition and its analysis in the reply creates suspicion on the story of the prosecution. It has been admitted in the reply about a vehicle to be parked at 9:31:26 PM of 08.05.2024 near the house of the petitioner, however it has been rightly mentioned that the number of the car cannot be seen. I have watched the video and it is difficult to infer the number or even the make of the vehicle. However, in para 5(1) supra, it has been admitted that a white colour Scorpio car was seen at 9:31:26 PM. It is common knowledge that beacon lights are used only by police or ambulance. Despite such serious allegations, the SSP did not looked into the same. The petitioner was taken a day prior to the date when 260 grams of Heroin was allegedly shown to be recovered in which petitioner was shown to be present on driver seat. It is strange that once the SSP has noticed that there was white colour Scorpio car present at the streets of village at 9:31:26 PM of 08.05.2024 then why further investigation was not conducted in this regard. Although it is not a case for quashing of FIR but it is a material factor to satisfy the conditions of Section 37 of NDPS Act. Although the police had shown recovery of Heroin from the vehicle on 09.05.2024 after 7 PM but given the presence of vehicle in the CCTV footage of 08.05.2024 in the night time, it is a case where a doubt is casted.

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6. Although this is not a ground to quash FIR but before filing of police report, the police complete investigation shall be shown to IGP. Before framing of charges, it shall be permissible for the petitioner to file discharge application and the trial Court before proceeding further pass an order of framing charges and shall decide such application. If the petitioner does not file discharge application within reasonable time or seek unnecessary adjournment, then the liberty granted by this Court to file discharge application shall stand recalled. However, on the aforesaid grounds, petitioners (Sarban Singh @ Sony and Vishal Singh) have made out a case to be released on bail. It is clarified that this order has not to be construed to be an opinion on the merits of the case.

7. 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.

8. For now, the petitioners (Sarban Singh @ Sony and Vishal Singh) have 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.

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.

[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].

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- (b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [Customs, New Delhi v. Ahmadaliev Nodira, (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. Ahmadaliev 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. Ahmadaliev 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].

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(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.

10. As per paragraph 10 of the bail petition, the petitioner has been in custody since 08.05.2024. 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 further pre-trial incarceration at this stage.

11. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners (Sarban Singh @ Sony and Vishal Singh) makes a case for bail. Given above, CRM-M No.32746 of 2024 and CRM-M No.32861 of 2024 stands allowed subject to the conditions mentioned in the order. This order shall come into force from the time it is uploaded on this Court's official webpage.

12. Given above, provided the petitioners (Sarban Singh @ Sony and Vishal Singh) are not required in any other case, the petitioners shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court

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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.

13. While furnishing a personal bond, the petitioners 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)	

14. This order is subject to the petitioner’s complying with the following terms.

15. The petitioners 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.

16. Given the background of allegations against the petitioners, 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 petitioners 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.

17. 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

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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."

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

19. 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.

20. **Petition CRM-M No.32916 of 2024 stands dismissed with the observations made in para no.6 of the order.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

12.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.