

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.33793 of 2024
Reserved on: 06.08.2024
Pronounced on: 30.08.2024

Manpreet Singh @ Duda ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gursimran S. Bawa, Advocate
for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
66	19.04.2024	Chheharta, District Police Commissionerate Amritsar	21-B, 27-A and 29 of NDPS Act, 1985

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. Facts of the case are being taken from reply dated 03.08.2024 which is reproduced as under:

“ 4) That it is submitted that as per the report furnished by the Station House Officer, Police Station Chheharta, Amritsar City, on 19.04.2024, the police party headed by ASI Shashpal, Police Station Chheharta, Amritsar had apprehended the accused Raju @ Raunki S/o Lakkbir Singh R/o Abadi Nanakpura, Guru Ki Wadali, Chheharta, Amritsar as upon seeing the police party the above said Raju @ Raunki got perplexed and took out one polythene envelope from right pocket of his pyjama and tried to throw it away. Upon checking the above said polythene envelope, it was found containing 07 gm. of heroin and drug money Rs. 3000/-,

which were taken into police in accordance with law. The present case FIR No. 66 19.04.2024, under Section 21B, 27A, 29/61/85 NDPS Act, in this respect and dated AR itsaly NO. 9-09-2024 OF Face Station Chheharta, Amritsar was registered the above noted accused Raju @ Raunki was arrested in this case on the same day i.e. 19.04.2024 by ASI Shahspal.

5) That on the next day, the accused Raju @ Raunki along with parcel of the contraband was produced before the jurisdictional learned Court, proceedings under Section 52A NDPS Act were initiated and police remand of the accused Raju @ Raunki was granted by the learned JMIC, Amritsar.

6) That during the course of investigation of the present case FIR No.. 66 dated 19.04.2024 (supra), the accused Raju @ Raunki made disclosure statement dated 21.04.2024 before the Investigating Officer that he along with the present petitioner Manpreet Singh Duda S/o Sawinder Singh indulge in selling heroin and they both had purchased 10 gm of heroin from one Rajbir Singh @ Raja S/o Shinda Singh R/o Basarke Bhaini, Amritsar. They had sold 03 gm. of heroin and remaining 07 gm of heroin and drug money Rs. 3000/- was recovered from him. Therefore, on the basis of the above disclosure statement, the present petitioner Manpreet Singh @ Duda and above noted Rajbir Singh were nominated as co-accused in the present case FIR No. 66 dated 19.04.2024 (supra). The disclosure memo is annexed herewith as Annexure R-1/T for the kind perusal of this Hon'ble Court.

7) That it is submitted that during the course of investigation of the present case FIR No. 66 dated 19.04.2024 (supra), the present petitioner Manpreet Singh@ Duda was arrested on 11.05.2024. During investigation, the present petitioner Manpreet Singh @ Duda made disclosure before the Investigating Officer that he along with the above noted accused Raju @ Raunki was involved in selling heroin and they both had purchased 10 gm of heroin from Rajbir Singh @ Raja, out of which they sold 03 gm of heroin in Rs. 6000/-. They both distributed Rs. 3000/- each between them. Thereafter Raju @Raunki was apprehended with remaining 07 gm of heroin and drug money Rs. 3000/-. The petitioner Manpreet Singh @ Duda further disclosed that he has spent his share Rs. 3000/- of drug money. The present petitioner Manpreet Singh @ Duda was produced before the jurisdictional learned Court and was sent to judicial custody on 12.05.2024."

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. He further submits that rigors of Section 37 of NDPS Act not attributed as recovery is of only 7 grams of heroin and Rs.3,000/- as drug money.

5. The State opposes bail by way of filing reply dated 03.08.2024.

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

7. 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 offence regular statutes.

8. 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.

9. As per paragraph 7 of the reply, the petitioner has been in custody since 11.05.2024. The quantity involved is slightly above small and also considering the petitioner's age and further 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 for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

10. 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.

11. 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 Ilqa 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.

12. 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)	

13. 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.

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. 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.

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

17. 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.

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

(ANOOP CHITKARA)
JUDGE

30.08.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.