

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34220-2024
Reserved on: 06.09.2024
Pronounced on: 27.09.2024

Har minder Singh @ Sonu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Saurav Bhatia, Advocate
for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
209	07.12.2022	City Nawanshahar, District S.B.S.Nagar	21 of NDPS Act (Sections 29 and 31 of NDPS Act added later on)

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. Per paragraph 13 of the bail application, the accused has the following criminal antecedents:

Sr. No	FIR No.	Dated	Offences	Police Station
1	60	04.06.2019	21 of NDPS Act	Mahilpur, District Hoshiarpur
2	242	21.10.2022	21/61/85 of NDPS Act and 52-A of Prisoners Act	City Kapurthala
3	84	17.06.2021	21/29/31 of NDPS Act and Section 482 IPC	STF Mohali, District SAS Nagar
4	179	20.07.2023	18/22 of NDPS Act and 52 of Prisoners Act	Kotwali Kapurthala
5	139	16.11.2018	22/61/85 of NDPS Act	Mahilpur, District Hoshiarpur

3. The facts and allegations are taken from the reply filed by the State. On Dec 7, 2022, based on chance recovery, the Police seized 90 grams of ICE (drug) from Mohd. Tahir's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. During the custodial interrogation, the accused, Mohd Tahir, disclosed that he was a carrier of the contraband, which belonged to the petitioner, who had directed its delivery from inside the jail.
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 status report.
7. FSL tested positive for Methamphetamine. Dealing in 90 grams of Ice is a punishable offense under the NDPS Act in the following terms:

Substance Name	METAMFETAMINE/ Ice/ Meth
Quantity detained	90 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	180.00%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	159
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	METAMFETAMINE
Other non-proprietary name	methamphetamine
Chemical Name	(±)-(S)-N,α-dimethylphenethylamine, (+)-2-methylamino-1-phenylpropane
Small Quantity	2 Gram
Commercial Quantity	50 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	NDPS Act, 1985 (61 of 1985), S.O. 821(E)
dated	11/14/1985
Sr. No.	19
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	METHAMPHETAMINE
Other non-proprietary name	*****

Chemical Name	(+)-2-Methylamino-1-phenylpropane
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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:

“6. That during police interrogations, the co-accused Mohd Tahir vide his discloser memo dated 09.12.2022 voluntarily confessed and disclosed that the petitioner Harminder Singh Sonu was remained his School mate and both of them knew each other very well. He further disclosed that Harminder Singh despite his involvement in NDSP Case and confinement at Central Jail, Kaputhala is well in his touch from inside of prison also. He further disclosed that on 04.12.2022 when he had finished POP work at village Rahalli, then he received a call from Harminder Singh on which Harminder Singh told him to bring ICE (Drug) from Delhi for which he offered to pay Rs. 10,000/- for said work. He further disclosed that Harminder Singh told him that he will send Rs. 1,10,000/- for sald ICE (Drug). He further disclosed that due to greediness, he left his work and returned back at his home. He further disclosed that Harminder Singh called him again and instructed him to come out from Home to collect money where he had delivered Rs. 1,10,000/- in denomination of Rs. 500/500 currency notes through one youth having covered his face. He

further disclosed that on every next morning, he had departure for Delhi in Bus and at Night he stayed near Bus Stand. He further disclosed that the petitioner Harminder Singh again called him to know about his appearance and cloths and instructed him to go near HP Petrol Pump at Vikaspuri and stand on Road. He further disclosed that on this, he arrived at the location disclosed by Harminder Singh @ Sonu Panda where one foreign person who was appeared to be Nigerian wearing helmet came on Scooty who identified him from his appearance and cloths and took him at fair distance. He further disclosed that sald Nigerian person had handed over him ICE (Drug) wrapped in polythene bag and took Rs. 1,10,000/- from him and returned back. He further disclosed that at that night, he stated at Delhi then next day returned back by Bus. He further disclosed that Sonu Panda told him to stay at place which he will inform him on his arrival at Nawanshahr. He further disclosed that Sonu Panda told him to stand at the turn of link road where the police party had apprehended him. He further disclosed that he had brought the recovered contrabands with the money given by Harminder Singh @ Sonu Panda. On this, petitioner Harminder Singh @ Sonu was nominated as accused in the case and section 29 NDPS Act added in the case vide rapt no. 28 dated 09.12.2022.

8. That thereafter, on 13.12.2022, the accused Harminder Singh @ Sonu @ Panda who was confined in central jail Kapurthala in some other case was brought on production warrant and produced before the Ld. Ilaqa Magistrate, SBS Nagar from where he was formally arrested and during interrogation, the petitioner-accused voluntarily confessed the crime for which he is being tried. During investigation, because the petitioner had past convicted antecedent and he had abetted his co-accused Mohd. Tahir to commit crime under NDPA Act, hence, section 31 NDPS act added in the case vide rapt no. 26 dated 13.03.2023.”

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 offence.

13. As per paragraph 12 of the status report, the petitioner has been in custody since 13.12.2022 and total custody in this FIR is 1 year and 9 months. 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.

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 this Court's official webpage.

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.

18. 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 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

27.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No