

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.36043 of 2023
Reserved on: 07.08.2024
Pronounced on: 30.08.2024

Buta Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Arihant Goyal, Advocate for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
19	22.03.2023	Mehal Kalan, District Barnala	22, 29, 61, 85 of NDPS Act and 473, 411 IPC (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. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.

3. Facts of the case are being taken from Paras 3 and 4 of reply dated 24.07.2024, filed by the concerned DySP, which read as follows:

3. That brief facts of the case are that on 22.03.2023 a police party headed by SI Satpal Singh was present near Baba Gandha Singh School, Mehal Kalan in connection with patrolling and checking of suspected persons then special informer came there and informed him that Buta Singh son of Mohinder Singh resident of Tallewal is habitual to take intoxicant tablets from outside and sell the same in the villages and today he is coming from village Gehal to Chhiniwal on motorcycle no. PB02YC-5256 make Livo Honda of black colour for supplying the intoxicant tablets. In case barricading is held at Gehal to Chhiniwal road then he can be apprehended red handed and from their possession huge quantity of intoxicant tablets can be recovered. On the basis of said information SI Satpal Singh sent ruqa to the police station and got registered the present case.

4. That then police party headed by SI Satpal Singh moved towards place informed by the informer and when police party reached near the turn of grain market, Chhiniwal then one person was seen who was coming from Gehal side on Motorcycle No. PB02YC5256 and one plastic bag was hanging with the handle of

said motorcycle. On seeing the police party, he tried to turn his motorcycle towards Grain Market Road, but suddenly engine of said motorcycle was stopped. On the basis of suspicion, SI Satpal Singh with the help of police party apprehended said motorcyclist and on enquiry he disclosed his name as Buta Singh son of Mohinder Singh. Police tried to join public witness, but nobody was ready for the same. Then SI Satpal Singh introduced himself to said Buta Singh and told him that he has doubts that the plastic bag hanging with the handle of the said motorcycle is containing intoxicant tablets, and search of Buta Singh, his motorcycle and plastic bag is to be conducted, but he has legal right to conduct the search in presence of any gazetted officer or any magistrate. Then he replied that he has faith upon SI Satpal Singh and he can conduct the search. On this notice u/s 50 of NDPS Act and a memo of consent were prepared. During search of said plastic bag 500 loose tablets were recovered. A parcel of recovered tablets was prepared and same was sealed by SI Satpal Singh with his seal SS and the sample seal was prepared separately.

4. The petitioner's counsel argued that the petitioner was arrested on 22.03.2023 and a recovery of 500 Tablets from the possession of the petitioner was shown and thereafter the tablets were sent to Regional Testing Forensic Science Laboratory, Bathinda on 24.03.2023 and report of the same was delivered on 02.05.2023. He further submitted that as per report dated 02.05.2023 (Annexure P-2), average weight of each tablet was found to be 145.87 mg. and for 500 tablets, total weight comes out to be approx. 73 grams which is lesser than the commercial quantity as provided in the notification dated 19.10.2001 (Annexure P-3) as the contraband Alprazolam is mentioned at Sr. No. 178 of the Notification wherein 5 grams of Alprazolam is considered to be of small quantity and that of 100 grams is commercial quantity.

5. The petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner's counsel argued that the custodial investigation would serve no purpose whatsoever and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

6. The State's counsel opposes the bail and has referred to relevant paras of the reply, which read as follows:

" 6. That during the investigation of the case on 23.03.2023 accused Hans Raj Singh @ Hansa was arrested by the police and from his possession 310 loose intoxicant tablets were recovered. Parcel of recovered tablets was prepared and same was sealed by SI Satpal Singh with his seal SS and sample seal was prepared separately.

7. That during the investigation of the case, the number plate PB02YC- 5256 affixed on the motorcycle make Honda Livo recovered from the possession of Buta Singh was found fake and actual registration of said motorcycle is PB10GG-2501 due to which offence u/s 473/411 IPC have been added in this case vide DDR No.31 Dated 01.05.2023.

8. That as per FSL reports from both the parcels Alprazolam salt was found in both the parcels. Copies of FSL reports are attached herewith."

7. An analysis of the above would lead to the following outcome.

8. The quantity recovered from the petitioner is 72.9 grams of Alprazolam, which is prima facie less than commercial.

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

10. 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.

11. 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.

12. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he had intimidated the witnesses, hampered the investigation, or, despite being called to join the investigation, did not appear before the investigator.

13. As per paragraph 3 of the bail petition, the petitioner has been in custody since 22.03.2023. Per the custody certificate dated 06.08.2024, the petitioner's total custody in this FIR is four months and eleven days. 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.

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, subject to the compliance of the conditions mentioned below.

15. Given the above, there would be no justification to discontinue the interim protection, which is made absolute subject to the petitioner complying with the terms of the bail order and the following additional conditions.
16. Given the background of allegations against the petitioner, it becomes paramount to protect the complainant, witnesses, and 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, provided otherwise permissible in the concerned rules. Restricting firearms would 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 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. **Petition allowed** in terms mentioned above. Interim order is made absolute. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No