

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-41604-2024
Reserved on: 02.12.2024
Pronounced on: 19.12.2024

Baldeep Kumar @ Gacha ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Tarun Vir Singh Lehal, Advocate, for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
185	03.07.2024	Civil Lines, Batala	105 BNS and 21, 29 of the NDPS ACT

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 7 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts and allegations are taken from the reply filed by the State, which read as follows:

“That, it is humbly submitted that the brief facts of the case are that the present case was got registered by the complainant Jaspinder Kaur to the effect that on 02.07.2024 at about 09:00 PM accused Jaspinder Singh visited her house and took her son Sehajpreet Singh to Golden Temple at Amritsar alongwith him. It was further stated by the complainant that on 03.07.2024 at about 07:30 PM, Jaspinder Singh called on her mobile phone from her son's mobile phone and stated that Sehajpreet Singh is in their house in an unconscious condition. The complainant alongwith her family visited the house of Jaspinder Singh, where they saw her son in an unconscious condition and froth was coming from his mouth and her son was already died. The complainant further stated that her son had died due to consumption of poisonous substance given to him forcefully by Jaspinder Singh

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 State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the following portions of the reply, which read as follows:

"7. That, it is humbly submitted that on 4.7.2024 when police party was present in the area of Police Station Civil Lines, Batala in search of nominated accused Baldeep Singh, then a secret information was received by Investigating Officer that the said Baldeep Singh is moving near Hansli Drain and when they reached near him, he on seeing the police party tried to run away and also tried to throw away the black envelope from his wearing trouser. ASI alongwith official companions nabbed him on the basis of suspicion that he is having some intoxicant substance. He was informed that he is in possession of intoxicant substances and his search is to be conducted but he is having legal right that he can get conduct his search before any Magistrate or any Gazetted Officer who will be called on the spot. He reposed faith upon him and said to conduct his search. On that consent memo was separately prepared and no intoxicant substance was recovered during his personal search. On search of plastic envelope already recovered from him, 10 grams heroin with plastic envelope was recovered."

7. The quantity alleged is also not commercial. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

8. 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.

9. 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. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the

Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Actⁱ.

10. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, per paragraph 5 of the bail petition, the petitioner has been in custody since 04.07.2024. Per the custody certificate dated 29.11.2024, the petitioner's total custody in this FIR is 04 months and 23 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 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 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.

12. 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.

13. 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)	

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

15. 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.

16. 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.

17. 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 instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offence.

18. This bail is conditional, and the foundational condition is that if the petitioner repeats the offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

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

20. 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.

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

(ANOOP CHITKARA)
JUDGE

19.12. 2024
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Whether speaking/reasoned: Yes
Whether reportable: No.