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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.41337 of 2024
Reserved on: 18.10.2024
Pronounced on: 29.10.2024

Sonu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ajaypal Singh, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
38	06.12.2023	State Special Opertions Cell, Fazilka Intelligence Wing (CID), Punjab	21(c), 25 (deleted later on), 29, 61, 85 (Section 27 added later on), 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 8 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. On December 06, 2023, based on prior information, the Police seized 505 grams of heroin from the petitioner's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. The petitioner's counsel argues that as per prosecution version, on 06.12.2023, police party headed by SI Charat Singh Glong with fellow officials of State Special Operation Cell, Fazilka were going from Faridkot to Ferozepur and met another police party of District Ferozepur headed by ASI Sukhaip Singh and fellow officials near Grain Market, Ferozepur. When the police personnel reached Shersha Wali Chowk at Ferozepur, a Special informer informed SI Charat Singh about the offence. In the present



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case, the complainant/informant and Investigating officer are the same person i.e. SI Charat Singh of SSOC, Fazilka which is against all settled principles of law and Natural Justice. The said police team of SSOC, Fazilka was duly accompanied by Police officials of District Ferozepur. The petitioner was alleged to have been arrested from Nihala Khilcha, District Ferozepur and therefore, the Jurisdiction to investigate upon receiving alleged secret information was with the police officials of District Ferozepur and not with the SSOC, Fazilka. No telephonic conversation or any transcripts of the petitioner having calls, messages or any call records are there on the record to corroborate the prosecution version with alleged information of secret informer. No independent witness or any such secret informer was joined as witness in the present case. There is absolutely no evidence on record to connect the present petitioner with alleged Pakistani smugglers. The challan had already been presented on 21.5.2024 and the petitioner is in-custody for about 10 months 11 days. The petitioner has been falsely implicated in the present case in order to save some powerful persons. The petitioner is a poor farm laborer, is survived by a wife and a daughter aged about 1% years; is a sole bread-winner of the family. No recovery as such of any contraband was made from the petitioner. Nothing is yet to be recovered and the petitioner has no criminal history.

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 paras 3 to 7 of the reply, which reads as follows:

"3. That brief facts of the case are that on 06.12.2024 a police party of State Special Operation Cell headed by SI Charat Singh was going from Faridkot to Ferozepur on government vehicle No. PB05Y1443 in connection with patrolling and checking of suspected persons. The police party was also having Laptop and Printer with them. When police party reached near Grain Market Ferozepur then another police party headed by ASI Sukhdip Singh on private vehicle met them. When police party reached at Shershah Wali Chowk, Ferozepur then special informer came there and informed SI Charat Singh that Pippal Singh son of Harnek Singh resident of village Kilche District Ferozepur and Sonu son of Manjit Singh resident of Ali Ke District Ferozepur are indulged in the smuggling of heroin at high level and they have links with Pakistani smugglers and they used to contact with Pakistani smugglers through internet and get smuggled the heroin from Pakistan through border of Satluj river and then supply the same in at various places of Punjab State. Said Pippal Singh and Sonu have got smuggled the heroin from Pakistani smugglers in of Nihala Kilcha area and both of them with muffled faces are going to smuggle the heroin further through motorcycle without number, from Kilche to Dhani Nihala Kilcha and Gandhu Kilcha and in



case barricading is held on the way at T-point then both of them can be apprehended red handed and huge quantity of heroin can be recovered from their possession. On the basis of said information SI Charat Singh sent the ruqa to the police station and got registered the present case and he had also sent the report u/s 42 of NDPS Act to AIG, Counter Intelligence.

4. That on the basis of said information SI Charat Singh held the barricading at the place informed by the informer. After sometime two motorcyclists without muffled face, who were on one motorcycle make Hero HF Deluxe without number plate, came there. SI Charat Singh got stopped the motorcycle and apprehended both the motorcyclists with the help of police party and on enquiring from the person who was driving the motorcycle disclosed his name as Pippal Singh s/o Harnek Singh r/o Kilche and person sitting on pillion seat disclosed his name as Sonu (Petitioner) son of Manjit Singh. SI Charat Singh tried to join public witness in the police party, but nobody become ready for the same. Then SI Charat Singh introduced himself to said Pippal Singh and Sonu and apprised them about their legal right that he has doubt that there is some intoxicant substance in their possession, so search of themselves and their motorcycle is to be conducted, but they have legal right to get the search conducted in presence of any gazetted officer or any magistrate. Then both of them replied that they want to get the search conducted in presence of any gazetted officer. In this regard SI Charat Singh issued notice u/s 50 of NDPS Act to the petitioner and said Pippal Singh. Then SI Charat Singh contacted with AIG, counter intelligence and after narrating all the circumstances to him, SI Charat Singh requested to send some gazetted officer at the spot. After sometime, Bhupinder Singh, DSP (H), Ferozepur came there at the spot.
5. That Bhupinder Singh DSP (H), Ferozepur introduced himself to said Pippal Singh and Sonu and apprised them about their legal right that he has doubt that there is some intoxicant substance in their possession, so search of themselves and their motorcycle is to be conducted, but they have legal right to get the search conducted in presence of any other gazetted officer or any magistrate. Then both of them replied that they have faith upon Bhupinder Singh, DSP(H), Ferozepur and he can conduct the search. On this memos of consent were prepared.
6. That then as per directions of Bhupinder Singh, DSP (H), Ferozepur, SI Charat Singh conducted the search of Pippal Singh and during his search heroin packed in plastic polhythen was recovered which was tight with his waist with the help of cloth. On measuring its weight same was found 510 grams. Parcel of recovered heroin was prepared and same was sealed by SI Charat Singh with his seal CS and Bhupinder Singh DSP had also affixed his seal BS over said parcel. During search of said motorcycle no document regarding its ownership was recovered.
7. That then as per directions of DSP, SI Charat Singh conducted the search of petitioner and during his search heroin packed in plastic polythene which was tight by petitioner with his waist with the help of cloth was recovered. On measuring its weight same was found 505 grams. Parcel of recovered heroin was



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prepared and same was sealed by SI Charat Singh with his seal CS and Bhupinder Singh DSP had also affixed his seal BS over said parcel. Sampie seal was prepared separately by SI Charat Singh and same was also attested by DSP (H), Ferozepur.”

8. Dealing in 505 grams of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	505 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	202.00%

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.	56
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin
Other non-proprietary name	*****
Chemical Name	Diacetylmorphine
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	11/14/1985
Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is



	contained in every one hundred mililitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.
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9. 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.

10. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offense punishable for offenses involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offense and is not likely to commit any offense while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offense punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

11. The State’s Counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the

¹**37. Offences to be cognizable and non-bailable.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
(a) every offence punishable under this Act shall be cognizable;
(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.



petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

12. 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 exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. 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 them 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 an offense and is not likely to commit any offense while on bail. If either of these 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 the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again.

13. The submissions made above and the grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

14. Per reply filed by the State, the petitioner is in custody since 06.12.2023, which cannot be considered prolonged, and the ratio of Dheeraj Shukla does not apply.

15. The petitioner is not entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Dheeraj Shukla would be attracted when the three conditions are fulfilled,

- (a). The custody of more than two years and six months and the delay was not attributable to the accused.



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- (b). The trial is at an initial stage.
- (c) The petitioner is the first offender.

16. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

18. Petition **dismissed**. Interim orders, if any, are recalled with immediate effect. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.10.2024

Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.