

CRM-M-46425-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46425-2024
Reserved on: 06.11.2024
Pronounced on: 18.11.2024

Jaspreet Singh alias Preet ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kamal Narula, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
40	06.03.2024	STF Wing, Fazilka	21 of NDPS Act (later on added Section 29 of 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 15 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 March 06, 2024, based on prior information, the Police seized 255 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 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. Dealing in 255 grams of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
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Quantity detained	255 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	102.00%

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 millilitre 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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7. 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.

8. 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.

9. 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 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.

10. 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

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.

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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.

11. It shall be relevant to refer to the following portions of the reply, which read as follows:

"3. That it is most respectfully submitted that case FIR No.40 dated 06.03.2024 under section 21 NDPS Act (offence u/s 29 NDPS Act added later on), Police Station, Special Task Force, Phase-4, Mohali, District S.A.S. Nagar was registered against the petitioner Jaspreet Singh on the basis of secret information of an informer.

I. That on 06.03.2024, ASI Balkar Singh, S.T.F. Ferozepur Range alongwith ASI Beant Singh, No. 1411/Ferozepur, Sr. Constable Navjot Singh 90/Fazilka on private vehicle bearing No.PB-05-AN- 5152, which was being driven by ASI Balkar Singh and ASI Baljinder Singh No.721/Ferozepur, Sr.Constable Sukhdeep Singh no.75/719, PAP, Sr.Constable Harpreet Singh No.75/601, PAP, Sr.Constable Harmmeet Singh no.119/Moga on Government vehicle no. PB-11CB-5832, which was being driven by Sr. Constable Gurnam Singh No.4C/397 moved from office of S.T.F. Ferozepur Range towards the area of Khai, Janga Wala Maur, Lakho Ke Behram, Goluka Maur and Jalalabad in connection with the checking of suspicious persons and intoxicant substances.

II. That while doing checking, when the police party reached Near Ghanta Ghar Chowk, Jalalabad, at about 2:55 PM, then a secret informer got stopped their vehicle by giving signal with his hand and informed that present petitioner Jaspreet Singh alias Preet son of Jaswant Singh, r/o Baghe Ke Uttar, Jalalabad is running Hotel under the name and style of "M/s Jass Villa" at Muktsar Road Bye-pass, Mannewala and under the guise of running hotel, he is also running the business of sale of heroin and at present he is standing near his hotel on Pulsor motor cycle along with heroin and was waiting for his customers, to whom he sells heroin.

III. That the information was found to be reliable and prima facie offence

Under Section 21 NDPS made out against accused Jaspreet Singh alias Preet petitioner and as such, Ruqa was sent through email as well as by hand through Sr. Constable Navjot Singh 90/Fazilka, which resulted into registration of above said FIR against petitioner Jaspreet Singh alias Preet. Reports u/s 42 of NDPS Act were also prepared and sent to the Deputy Superintendent of Police, STF Range, Ferozepur for information.

4. That the preliminary investigation of the case was conducted by ASI Balkar Singh, STF Range, Ferozepur, who along with companions reached at the place as disclosed by secret informer and the petitioner was found standing along with motor cycle. On seeing the police party, the petitioner tried to run away from the spot, but he was apprehended. Then ASI Balkar Singh disclosed his identity and rank to the present petitioner and raised suspicion of having some intoxicant substance in his possession and stated that his search is to be conducted, but he has legal right to get his search conducted before any Gazetted officer or Magistrate. The present petitioner stated that he wanted to get his search conducted before some Gazetted officer, upon which his Memo of Non- consent was prepared at the spot. Accordingly, Mr.Rakesh Kumar, PPS, Deputy Superintendent of Police, S.T.F. Ferozepur Range was called at the spot by making Telephone call, who reached at the spot and disclosed his name, rank and place of posting to petitioner, who agreed to get his search conducted before him, upon which, Memo of Consent was prepared at the spot. The Investigating Officer tried to join the independent public witness, but no one was found and accordingly after completing all the mandatory formalities under the provisions of the NDPS Act, personal search of the petitioner was conducted and recovery of 255 gram heroin was effected from his personal search. The same was taken into possession by the police. The motor cycle without the registration number bearing Chassis no.MD2A17CZ6FWC02140, Engine no. JEZWFC66352 was recovered and also taken into possession by the police. The petitioner was arrested. After completion of requisite formalities, the site plan of the spot was also prepared.

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12. A. ROLE OF PETITIONER

That so far role of petitioner is concerned, it is most respectfully submitted that the petitioner was apprehended along with the 255 gram heroin in his conscious possession which falls under the category of commercial quantity.

B. EVIDENCE AGAINST PETITIONER

That so far as the evidence against the petitioner is concerned, during investigation, it transpired that the petitioner is indulged in selling heroin in order to earn easy money. Further during investigation, it was found that the petitioner transferred Rs.1,20,000/- from his two bank accounts in the bank account of co-accused Sanket and the statement of accounts were obtained during investigation, which shows the petitioner purchased heroin from the co-accused Sanket through the aforesaid amounts.”

12. 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.

13. As per para 7 of the petition, petitioner is in custody from the date of FIR i.e. 06.03.2024 and accordingly, his custody in this FIR is approximately 08 months.

14. In Union of India (NCB) v. Khalil Uddin, decided on 21 Oct 2022, 2022 SCC OnLine SC 2109, Hon’ble Supreme Court holds,

[4]. According to the prosecution, contraband material weighing about 13 kgs. of morphine was found in a motor vehicle which was driven by co-accused named Md. Jakir Hussain. During the course of investigation, it was found that the motor vehicle was recorded in the name of Md. Nizam Uddin who had executed a sale letter and handed over the custody of the vehicle to accused Md. Abdul Hai and that accused Md. Jakir Hussain was the driver employed by accused Md. Abdul Hai and that contraband material in question was to be handed over to accused-Khalil Uddin, an owner of a tea shop.

[5]. The High Court by its order which is presently under challenge, directed release of both the accused as stated above on bail after they had undergone custody to the tune of about a year. Questioning grant of relief to said accused, the instant appeals have been preferred.

[7]. What emerges from the record is that large quantity of contraband weighing about 13 kgs of morphine was found in a car which was driven by Md. Jakir Hussain. Whether the role played by said Md. Jakir Hussain could get connected with both the accused is a question.

[8]. The answer to said question could be the statement recorded of Md. Nizam Uddin. The statement of Md. Jakir Hussain recorded

under Section 67 of the Act has also named his owner accused Abdul Hai. We are conscious of the fact that the validity and scope of such statements under Section 67 has been pronounced upon by this Court in *Tofan Singh v. State of Tamil Nadu*. In *State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta*, the rigour of law lay down by this Court in *Tofan Singh* was held to be applicable even at the stage of grant of bail.

[9]. However, going by the circumstances on record, at this stage, on the strength of the statement of Md. Nizam Uddin, though allegedly retracted later, the matter stands on a different footing. In our considered view, in the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail. We, therefore, allow these appeals, set aside the view taken by the High Court and direct that both the appellants be taken in custody forthwith.

[10]. We have been given to understand that the charge-sheet has been filed. In the circumstances, we direct the Trial Court to take up the matter and conclude the proceedings as early as possible and preferably within six months from the receipt of this order.

15. In *Narayan Takri v. State of Odisha*, decided on 10 Sep 2024, SLP (Crl.) 8198-2024, Hon'ble Supreme Court holds,

The petitioners are in custody since 28th May, 2022 for alleged commission of alleged offence under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. As per the FIR allegation, 125.3 kg. of "Ganja" was recovered from the petitioners.

[3]. It is not in dispute that the trial has commenced and that three prosecution witnesses have been examined till date.

[4]. Learned counsel for the petitioners submits that the third prosecution witness was examined as far back as on 28th January, 2024 and since then, no other prosecution witness has been examined. There is, however, no such averment in the petition.

[5]. Learned counsel appearing for the respondent submits that every endeavor shall be made on behalf of the prosecution to have all the witnesses examined by the end of this year.

[6]. The trial court is encouraged to expedite the trial and give its decision as early as possible, in accordance with law.

[7]. We, however, do not see any reason to interfere the impugned judgment and order at this stage; however, it is clarified that in the event the trial is not completed by the end of this year, the petitioners shall be at liberty to renew their prayer for bail before the trial court.

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.

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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. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

18.11.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.