

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.44915 of 2024
Reserved on: 14.11.2024
Pronounced on: 29.11.2024

Kamaljit Kaur @ Kamaljeet Kaur @ Kamla ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ramnish Puri, Advocate
for the petitioner(s).

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
43	21.06.2024	Aur, District SBS Nagar	21 (section 29 added later on) of NDPS Act, 1985

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court for the second time, under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking anticipatory bail.
2. In paragraph 16 of the bail application and para 9 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	06	23.01.2018	Under sections 21, 22, 29 of NDPS Act	Mukandpur
2.	135	17.12.2018	Under sections 323, 354, 452, 506, 148, 149 IPC	Rahon
3.	28	10.05.2023	Under sections 21, 29 of NDPS Act	Aur
4.	57	30.08.2021	Under sections 21, 29 of NDPS Act	Mukandpur
5.	63	19.06/2009	Under section 21 of NDPS Act	Mukandpur
6.	03	21.01.2015	Under section 21 of NDPS Act	Aur
7.	53	01.07.2022	Under sections 15, 18, 21, 22, 29, 31 of NDPS Act	Aur
8.	02	02.01.2024	Under sections 21, 29 of NDPS Act	Pojewal, District SBS Nagar
9.	62	2023	Under sections 21, 29 of NDPS Act	Mukandpur

3. The facts and allegations are taken from the reply filed by the State. On June 21, 2024, based on chance recovery, the Police seized 12 buprenorphine injections and 05 injections of Avil from the possession of the co-accused Kuldeep'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, Kuldeep named the petitioner as the seller of drugs. Based on this information, the petitioner was arraigned as an accused, and calls were found to have been made between them.

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 reply.

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

"Role of the petitioner:

7. That it is further submitted that during his interrogation, the accused- Kuldeep Kumar @ Tofi made disclosure before the investigating officer, wherein, he disclosed that he had purchased the recovered 12 injections of Buprenorphine and 05 injections of Avil from the present petitioner after contacting the petitioner on mobile No. 62841-98203 from the mobile number 98159-27782 of the accused- Kuldeep Kumar @ Tofi. It is further submitted that the accused- Kuldeep Kumar @ Tofi further disclosed that earlier, he had also procured the intoxicating injections from the petitioner number of times. On the basis of disclosure made by the accused- Kuldeep Kumar @ Tofi, the petitioner was nominated in the present case and offence under Section 29 of NDPS Act was added in this case vide DDR No. 14 dated 23.06.2024. Raids were conducted to arrest the petitioner, however, she is intentionally evading her arrest. It is further submitted that calls detail record (CDRs) of mobile number 62841-98203 of the petitioner (registered in the name of Jaspreet Kaur daughter of Jaswinder Singh) and 98159-27782 of the accused- Kuldeep Kumar @ Tofi were obtained during from the concerned telecom service provider, which reveal that petitioner remained touch with the said accused- Kuldeep Kumar @ Tofi through telephonic calls. Copy of disclosure statement of the accused- Kuldeep Kumar @ Toffi is attached herewith as Annexure R2/T."

8. The quantity allegedly involved in this case is prima facie commercial. Given this, the rigors of S. 37 of the NDPS Act and the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

9. Given the above, the petitioner has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

10. 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.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

(a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [*Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Para 6].

(b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [*Customs, New Delhi v. Ahmadaliev Nodira*, (2004) 3 SCC 549, Para 7].

(c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [*UOI v. Prateek Shukla*, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [*Union of India v. Niyazuddin SK & Anr*, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].

(e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [*N.R. Mon v. Md. Nasimuddin*, (2008) 6 SCC 721, Para 9].

(f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and

justifying that the accused is not guilty of the alleged offence. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid

Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[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.

11. 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. A perusal of the bail petition does not offer an acceptable explanation for the phone calls between them.
12. Another reason that dis-entitles for bail is the criminal antecedents. Considering the bail petition of an accused with a criminal history throws an onerous responsibility upon the courts to act judiciously and reasonably because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecution resulting in acquittal or discharge, or when Courts quashed the FIR, the prosecution stands withdrawn, or the prosecution filed a closure report, cannot be included. Although crime is to be despised and not criminal, for a recidivist, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles. If the petitioner is granted bail, she will likely re-indulge in the crime.
13. The impact of crime would also not justify anticipatory bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.
14. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.
15. **Petition dismissed.** Interim orders are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

29.11.2024

Sonia Puri

Whether speaking/reasoned: Yes

Whether reportable: No.