

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45748 of 2024
Reserved on: 16.10.2024
Pronounced on: 29.10.2024

Smile @ Sheru @ Rajnikant

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kapil Sharma, Advocate
 for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
68	16.06.2022	Navi Baradari, Distt. Jalandhar	21 & 22 of NDPS Act and 25 of Arms Act (Sections 29, 61, 85 of NDPS and 54, 59, 29, 25(8) of Arms Act added later)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973/ Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. Per reply filed to the petition, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	253	24.10.2018	Under sections 323, 324, 452, 354, 148, 149 IPC	Ramamandi Jalandhar
2.	281	14.11.2018	Under sections 307, 323, 324, 326, 148, 149 IPC	Div. No.8 Jalandhar
3.	21	14.03.2020	Under Section 25 of Arms Act	Div. No.4, Jalandhar
4.	271	15.09.2020	Under sections 307, 323, 324, 452, 345, 201 IPC	Div. No.8 Jalandhar
5.	44	01.03.2021	Under sections 458, 511, 506, 336, 268 IPC and 25 of Arms Act	Div. No.8 Jalandhar
6.	123	16.05.2021	Under sections 307, 148, 149 IPC and 25, 27 Arms Act	Div. No.8 Jalandhar



7.	163	12.06.2022	Under Sections 307, 323, 341, 34 IPC and 25, 27 of Arms Act	Div. No.8 Jalandhar
8.	29	07.07.2022	Under sections 384, 116, 120-B, 212, 216 IPC and 25 of Arms Act	Div. No.8 Jalandhar

3. The facts and allegations are taken from the reply filed by the State. It would be appropriate to refer to para 4 of the reply, which reads as follows:

"4. That succinctly, the factual matrix of the matter is that initially FIR was registered against accused Sunny, Smile (present petitioner), Divansh@ Vansh, Happy, Love Kumar, (accused Karanpreet Singh, Navjot Singh and Aman nominated later on) on the statement of ASI Mohan Lal, wherein he stated that when the police party headed by him, was present in connection with patrol duty in search of bad elements and drug smugglers in the area of T-Point Ladowali Road, Jalandhar, then one Dezire Car bearing No.PB-08- EW-8657 of white colour came in front of the police party. On seeing the police party, the driver of the car tried to turn the car but due to traffic at the back side he was unable to return and they were apprehended with the help of other police officials. Five persons were sitting in the vehicle and the driver of the car disclosed his name as Sunny son of Mangat Ram, whereas the person sitting on the co-pilot seat disclosed his name as Smile @ Sheeru @ Rajni Kant (i.e. present petitioner). Three persons sitting on the back seat of the car disclosed their names as Divesh @ Vansh, Happy and Love Kumar @ Noni. After giving option of search, when they have been searched, then 51 grams of Heroin, 280 gram of intoxicant powder, Rs.6 Lac drug money, one pistol along with two magazines and 28 cartridges have been recovered from Sunny, whereas 52 grams Heroin and 270 grams intoxicant OHAR Powder, one pistol along with two magazines and 14 cartridges were recovered from Smile @Sheru@ Rajni Kant (present petitioner); one pistol, two magazines along with 14 cartridges have been recovered from accused Divansh; one pistol along with 5 cartridges were recovered from Happy, where as Love Kumar @ Noni was also apprehended being member of the same gang sitting in the car, thereafter present FIR under Sections 21/22/29 of NDPS Act and Section25/54/59 of Arms Act was registered."

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

5. The petitioner's counsel refers to bail petition and specifically to para 5, which reads as follows:

"That the role attributed to the petitioner is that he was travelling with the accused persons then from his kit bag on his waist polythene bag containing heroin recovered and from one polythene bag powder and electronic weighing machine recovered heroin weight 270 grams and from left side under belt 1 local pistol alongwith magazine recovered and from right pocket one magazine recovered. Both magazines unloaded and 7-7 rounds in magazine total 14 rounds."

6. 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.

7. The State's counsel opposes bail and refers to para 12, which reads as follows:

8. The quantity allegedly involved in this case is *prima facie* 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.

9. 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.

10. 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.

11. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. 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.



CRM-M-45748-2024 -4-

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.

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. Per the custody certificate, the petitioner's custody is 2 year4 months, which cannot be considered prolonged, and the ratio of Dheeraj Shukla does not apply.

14. 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.
- (b). The trial is at an initial stage.
- (c). The petitioner is the first offender.

15. The petitioner is not entitled to bail on parity because there is recovery of drugs from the petitioner. No drug was recovered from Divansh, Happy and Love Kumar who have been granted bail and only weapons were recovered from them.



CRM-M-45748-2024 -5-

16. There is no assurance that if this Court grants bail, the petitioner shall not or is not likely to repeat the offense or indulge in violence.

17. 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.

18. Regarding the delay in the trial, if the trial does not conclude within three years of the petitioner's custody, the petitioner may apply for bail before the trial Court, and the court shall not be influenced by the dismissal of bail on merits or by the criminal history and decide it on changed circumstances as well as the prolonged history.

19. 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.

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

21. 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.