

2024:PHHC:163058



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48240-2024
DECIDED ON: 01.10.2024

LOVEPREET SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Jaswal, Advocate for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J1. Relief Sought

The jurisdiction of this Court has been invoked for the 3rd time under Section 483 of BNSS, 2023 seeking regular bail to the petitioner in case FIR No.214 dated 21.12.2023, under Section 21 and (Section 29 of NDPS Act, 1985 was added later on) registered at Police Station Majithia, District Amritsar.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

'Chief Officer Police Station Majitha "Jai Hind" Today I, SI including ASI Nachhatar Singh 1250, S/CT Gursevak Singh 1621, CT Palwinder Singh 1759, CT Manjinder Singh 1473, L/CT Kanwaljit Kaur 1589 riding on private vehicle including laptop printer and investigation kit on patrolling in connection to search for the bad peoples were present there at turn of village Targad, then a woman was seen walking from the street of the village Targad. When she saw the police party, she became pre-relaxed and immediately turned back and started to thrwoing the heavy waxed envelope in her right hand to the side then I, SI with

the help of fellow employees and L/CT Kanwaljit Kaur 1589, apprehended her on suspicion and asked for his name and address. Who gave her name as Sarabjit Kaur alias Shabbi wife of Baldev Singh resident of Targad police station Majitha. To whom I, SI asked about the object in the wax envelope, who told that it contained a drug substance. On which I SI gave a notice under Section 50 of the NDPC Act to Sarabjit Kaur alias Shabbi that I am SI Jangbahadar Singh is posted at Police Station Majitha. My uniform is on and the name plate is on. That you is to be searched, you have the legal right to have your search done by a magistrate or a gazetted officer. Which I can arrange at the spot, then Sarabjit Kaur alias Shabbi said that she should be search done by a gazetted officer. On which I, SI informed on phone to gazetted officer DSP Majitha Mr. Kanwalpreet Singh ji about the situation and requested him to come on the spot., After some time Shri Kanwalpreet Singh PPS Deputy Superintendent of Police of Sub Division Majitha along with the staff came to the spot. DSP Sahib ji stopped Sarabjit Kaur alias Shabbi and asked the name of the said person who gave her name Sarabjit Kaur alias Shabbi wife of Baldev Singh resident of Targad police station Majitha. DSP Sahib ji issued a notice under Section 50 of the NDPS Act to Sarabjit Kaur alias Shabbi and told that "I am Kanwalpreet Singh PPS Deputy Superintendent of Police and posted at Sub Division Majitha. I am wearing my uniform and my name plate is attached. You have to be searched because you are carrying narcotics. You have legal rights. You can get your search done by a magistrate or any other gazetted officer which I can arrange. Sarabjit Kaur alias Shabbi consented to be searched in the presence of DSP Sahib. Before searching Sarabjit Kaur alias Shabbi, tried to join the public witness party, but no one was ready to join the police party. Then I, SI in the presence of DSP Sahib and fellow employees executed the search of Sarabjit Kaur alias Shabbi by L/CT Kanwaljit Kaur 1589 on checking the wax envelope held in her right hand, Heroin was found in it, wax envelope containing heroin was weighed by SI using electronic probe from the investigation kit which found 260 grams of heroin including envelope. On which I, SI weighed the wax envelope with heroin in a plastic box and prepared the parcel and sealed it with his seal J.S. and DSP Sahib sealed it with his seal K.P.S. Sample stamp prepared separately. I, SI handed over my seal to ASI Nachhatar Singh 1250 and DSP Sahib kept his seal with him. Recovered Heroin One parcel box plastic containing 260 grams of heroin wax envelope with all seal J.S/K.P.S and Sample seal kept through different seized by police as evidence. Sarabjit Kaur alias Sabbi wife Baldev Singh resident of Targad police station Majitha has committed the crime of NDPS Act 21-61-85 by keeping 260 grams of heroin in her possession. On which for registration of case by wrote Ruqua by hand send through S/Ct Gursevek Singh 1621 to Police station. After

registration case number should be informed. Control room through wireless should be given. Special reports should be issued and sent to the service of the District Magistrate and officers. I, SI along with fellow employees is busy in investigation at the spot. Today at area turn at village Targad AT 4:45 PM Sd/- Jangbahadar Singh SI Police Station Majitha dated 21-12-2023.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of his mother namely Sarabjit Kaur @ Shabbi, who during her interrogation stated that the recovered contraband i.e., heroin was brought by her son namely Lovepreet Singh, the present petitioner. It is contended on behalf of the petitioner that the alleged contraband is only marginally over and above the commercial quantity.

On behalf of the respondent/State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the ground that the petitioner is a habitual offender, as he is involved in another case in similar nature.

4. **Analysis**

In everyday terms, the principle of law dictates that bail is the general rule, while jail is the exception. However, this Court acknowledges that the power to grant or deny bail is extraordinary and must be exercised with caution. It is well-established that when considering a bail application (whether pre-arrest or regular bail), the Court must form a *prima facie* opinion as to whether reasonable grounds exist to support the accusation, or if the accusation is frivolous and

baseless—possibly made with the intention of harming or humiliating the individual, or falsely implicating them in the crime. This evaluation must be conducted in light of the self-imposed restrictions and the broader legal parameters outlined.

This Court is mindful that, according to the legal mandate in Criminal Appeal No. 3840 of 2023, titled “***Saumya Churasia versus Directorate of Enforcement, decided on 14.12.2023***”, when considering a bail application, the Court is not obligated to meticulously examine the evidence gathered by the Investigating Agency. However, the Court must consider several factors, including the nature of the accusation, the type of evidence collected in support, the severity of the punishment for the alleged offences, the character of the accused, the unique circumstances surrounding the accused, the likelihood of securing the accused’s presence during trial, the possibility of witness tampering, and the broader interests of the public or State. In light of these factors, when assessing a bail application, the Court is required to form a *prima facie* opinion based on these broad guidelines, without delving into the merits of the evidence, as doing so could potentially prejudice the rights of both the accused and the prosecution.

While addressing the objectives of the NDPS Act, the Hon’ble Supreme Court in the case of ***Durand Didier v Chief Secretary, Union Territory Of Goa (1990) 1 SCC 95*** emphasized that the rampant issue of clandestine smuggling and illegal trafficking of drugs and substances has led to widespread drug addiction, particularly among adolescents and youth. This has had a harmful and devastating impact on society. With grave concern, it was noted that the organized activities of criminal groups and the illegal importation of narcotic drugs and psychotropic substances into the country have caused a significant

increase in drug addiction, especially among young people and students, affecting both genders. The menace has grown to alarming proportions in recent years. Consequently, to effectively combat and eliminate this growing threat, which is causing severe and harmful effects on society as a whole, Parliament, in its wisdom, enacted the NDPS Act of 1985, introducing provisions that mandate minimum imprisonment and fines for such offenses.

In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

“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 3 [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 subsection (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.”

Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

Adverting to the merits of the present case, wherein 260 grams of *heroin*, stands recovered, though not from the petitioner, but from his mother, who disclosed the name of the present petitioner in her disclosure statement that present petitioner is involved in the business of selling heroin from the last one year. Moreover, the quantity recovered is commercial in nature, therefore the rigours of Section 37 of NDPS would attract in this case and therefore, it would not be just for the Court to let the petitioner out added with the fact that he is a habitual offender, as he is involved in another case of similar nature.

5. **DECISION:-**

In the light of above, dictums and discussions made and the *modus operandi* of the kingpins engaged in illicit activities, whether trafficking in small or commercial quantities, must be met with unwavering resolve and stringent action. The intent of the legislature and the sanctity of the rule of law must be upheld at all costs, and cannot be allowed to be undermined, regardless of the quantity involved.

Hence, the same stands dismissed with no order as to costs.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

01.10.2024

Sham

Whether speaking/reasoned Yes/No

Whether reportable Yes/No