

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48480-2024
Reserved on: 16.10.2024
Pronounced on: 25.10.2024

Shivam @ Shivam Nandal ...Petitioner

Versus

Union of India ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rohit Sapehiya, Advocate
for the petitioner.

Mr. Manish Verma, Advocate for
Mr. J.S.Lalli, Dy. Solicitor General of India
for respondent-UOI.

ANOOP CHITKARA, J.

NCB Crime No.	Dated	Police Station	Sections
54	23.08.2022	NCB, Chandigarh	8/20/29/60 of the NDPS Act, 1985

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking interim bail.
2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the English translation of FIR, annexed with the petition as Annexure P-1, which reads as follows:

"1. That the complainant Karamvir Singh is the Intelligence Officer of the Narcotics Control Bureau (NCB), Chandigarh and is duly authorized to sign and present the complaint, carry out investigation, search, seizure and arrest etc, under Narcotic Drugs and Psychotropio Substances Act, 1985 (herein after referred to as 'the Act') within the territorial jurisdiction of Chandigarh Zonal Unit of NCB. He has conducted the investigation of the present case and is well versed with the facts of the present case.
2. That Sandeep Kumar is also Intelligence Officer of the Narcotics Control Bureau (NCB), Chandigarh and duly authorized to carry out search, seizure, investigation and arrest etc, under the Act within the territorial jurisdiction of Chandigarh Zonal Unit of NCB. He has affected the seizure of contraband in the present case under the Act.

3. That Mohinder Jit Singh is Assistant Director of NCB Chandigarh and Gazetted Officer and superior Officer of Sandeep Kumar and Karamvir Singh, Intelligence Officers.

4. That Smt.Meera Kumari Meena is the Superintendent of NCB Chandigarh and is Gazetted Officer and superior Officer of Sandeep Kumar and Karamvir Singh, Intelligence Officers for the provision of Section 57 of the Act. She is also the Officer in-charge of NCB Godown.

5. That the territorial jurisdiction of Chandigarh Zonal Unit of NCB spans to the States of Punjab, Himachal Pradesh, Haryana (except NCR) and Chandigarh (U.T.).

6. That present complaint is being filed u/s 36-A of the Act, for contravention of Section 8 of the Act by the above named accused, the offences are punishable u/s 20, 25, 28& 29 of the Act r/w Section 60 & 62 of the Act.

7. That facts leading to filing of present case are that on 23.08.2022 a 'Secret' specific information received by Rajneesh, Intelligence officer NCB, that "Shivam, aged 26 years, R/o Rothak, Kaushal, aged 26years, R/o Gurugram, Lavish aged 22 years R/o Karnal and Kabir aged 22years, R/oKarnal are bringing a consignment of Charas from Himachal Pradesh today in their vehicleno.HR 12 AP 5515.All will cross toll barrier Kurali, Ropar between 2100 hrs to2200 hrs on 23.08.2022"

8. That the information was typed by Rajneesh, IO, with request for mounting surveillance at suitable place to apprehend the person with contraband, and the same was put beforeSmt.Meera Kumari Meena, Superintendent Chandigarh Zonal Unit who constituted a team of NCB Officers/officials comprising of Sandeep Kumar (Intelligence Officer), Sumit Saini (Junior Intelligence Officer), Kulwinder, Sepoy, Jai Singh (Sepoy), Lalit, (S.A), Inder Singh (Driver). The iriformation was notified to Sandeep Kumar, Intelligence Officer. Karamvir Singh, Intelligence Officer was designated as Investigating Officer in case of seizure as per the order of Superintendent, NCB.

9. That further information about the suspect/accused was received and more information about the car was derived from online method. This further information was also placed before the Superintendent in written form by Rajneesh, Intelligence Officer and then passed on to Sandeep Kumar, Intelligence Officer by the Superintendent.

10. That the above team, which was present in the office on 23.08.2022, moved from the NCB office in one official vehicle and reached at Toll plaza Kurali, Rupnagar, Punjab.

11. That on arriving at Kurali Toll Tax Barrier, the N.C.B. team requested the passersby to join the team as public witness during the course of search, but all went away on the pretext of busy schedule & night hours. Then the N.C.B. Team contacted the Police of Police Station, Singh Bhagwantpura, on which ASI Telu Ram No.911 & ASI Mohan Lal No. 895/R from Police Station Singh Bhagwantpura arrived at the spot, who were told that the team from N.C.B., Chandigarh was having a secret information to the effect that one Shivam son of Suresh Kumar Nandal, resident of 411/30, Dev Colony, Rohtak with his associates Kaushal Yadav,

Lavish & Kabir is bringing a huge consignment of Charas from Kasol (H.P.) in a Baleno Car bearing Regn. No.HR 12AP 5515 colour grey, who will cross. Kurali Toll Tax Barrier, Ropar between 21.00-22.00 Hrs. Both the ASIs of Punjab Police were requested to remain present during search & recovery in capacity of independent witnesses, to which, ASI Telu Ram & ASI Mohan Lal agreed. They were also issued written notices by Sandeep Kumar, Intelligence Officer which they both accepted.

12. *That thereafter, the team from N.C.B., Chandigarh along with both the said independent witnesses started keeping vigil for the vehicles coming from Kiratpur side towards Kurali Toll Tax Barrier, Ropar. Then at about 2120 Hrs, a Grey colour Baleno car found coming from Kiratpur side. On arriving close, it found having Regn. No.HR 12AP 5515, on which, N.C.B. team gave signal to stop. On this, its driver stopped his car on left side.*

13. *Then Sandeep Kumar introduced himself & N.C.B. team by showing the Departmental I. Card and asked the name & address from the youngster sitting on driving seat, who told his name as Shivam Kumar son of Suresh Kumar Nandal, resident of 411/30, Dev Colony, Rohtak, while the youngster sitting on his adjoining seat told his name as Kabir and three youngsters, sitting on rear seat, told their name as Lavish, Kaushal & Lakshya. Then Sandeep Kumar, I.O., told all the persons, travelling in said car, about secret information available with them, on which first, all the said persons denied, but after some time Shivam admitted that there is a Charas consignment in dicky of their car bearing Registration No.HR 12AP 5515, which they have concealed in Speaker Box, kept in dicky of their car.*

14. *That as there was traffic jam problem, hence said Baleno car bearing Registration No.HR 12AP 5515 with all the said youngsters & independent witnesses was brought to Toll Barrier office, situated near Kurali Toll Barrier. Then said Shivam was asked to bring out the Charas consignment, concealed in car, on which, he opened the Speaker Box, kept in dicky of their car, with the help of screw driver and brought out a blue colour-polythene bag. On opening the said polythene bag, it was found containing four packets & three small plastic pouches. Moreover, a Charas crushing bowl, OCB Papers (Rolling papers for Charas) & an empty Tobacco packet were also found. On having asked, said Shivam told that said small three plastic pouches are also carrying Charas, which he had taken out from packets in order to use the same on the way. On being asked Shivam further told that from the recovered Charas packet weighing 700 Gms belonged to Shivam, packet weighing 300 Gms belonged to Kaushal, the packet having about 100 Gms Charas belonged to Kabir, while the packet with 14 Gms Charas belonged to Lavish. Then on having asked, all the said persons agreed to this fact.*

15. *That thereafter on opening all the packets, two packets were found containing dark brown colour round shape substance, while two other packets were found containing flat shape substance. Then small quantity of substance was taken out all packets and checked with the help of Drug Detection Kit, on which it were found to be positive for Charas. Then entire consignment of Charas was seized and the said packets were accordingly put in separate transparent polythene bags & weighed with the help of digital weighing scale, upon which the weight was found to be*

01.114 Kg.

16. That the Charas lying in said three small plastic pouches was put in packet belonging to Shivam. Then all the packets were hent sealed & put in separate white colour markin bags. The packing material was separately put in markin bag and crushing bowl, rolling paper & empty tobacco packets were put in markin bag in the way, as mentioned above. The opening side of parcels were sealed with the help of needle & thread & tagged with a cardboard piece, which were marked as Lot-A, Lot-B, Lot-C, Lot-D, Lot-P & Lot-Pl.

17. That thereafter, brass seal bearing Impression of N.C.B./CHD-20 was obtained from Sumit Saini, J.L.O. and affixed on all the lots (parcels) with the help of sealing wax. The impression of seal, used in seizure proceeding, was also affixed on the Panchnama.

18. That after using the said brass seal, the same handed over to Sumit Saini, J.L.O. Thereafter, said Baleno car bearing Registration No.HR 12AP. 5515 was also seized. The recovery-cum-seizure memo & site plan of place of occurrence were also drafted at the spot. A Panchnama was also drafted by recording entire proceeding conducted in this connection, contents of which were, read over & explained to all those present at the spot, on which, all of them admitted the same to be true & correct. All the said persons as well as both independent witnesses put their respective signatures on all lots, recovery-cum-seizure memo & site plan of place of occurrence, in presence of each other.

19. That thereafter, all the accused were issued a Notice U/s. 67 N.D.P.S. Act for recording their statement in Crime No. 54/2022 dated 23.8.2022 of Narcotics Control Bureau, Chandigarh for appearing before Intelligence Officer Karamvir Singh. Panchnama proceeding finished at 23.45 Hrs. in peaceful manner. That proceeding of seizure was completed peacefully at about 2345 hours on 23.08.2022. The Panchnama contained all the details of search and seizure proceedings and it was read over to all which then was signed by NCB officer Sandeep Kumar, Intelligence Officer, Sumit Saini, Junior Intelligence Officer, Shivam, Lavish, Kabir, Kaushal, Lakshaya and both witnesses. Written proceedings were conducted in. the office room of Kurali Toll Tax Barrier.

20. That the crime case file of NCB Cr.No-54/2022 was also handed over to Karamvir Singh, IO for further investigation vide office order NCB F.No-VIII/NCB/CZU/CF-A/54/2022 dated 23.08.2022 issued by Meera Kumari Meena, Superintendent and handing taking over was done accordingly.

21. That after coming back at NCB office, case property was deposited with the Officer in-charge of Godown of NCB Chandigarh and a receipt dt-24.08.2022 was obtained in this regard.

22. That on 24.08.2022 accused Shivam was made to understand about the provisions of section 67 NDPS Act by Karamvir Singh, I.O., that his statement can be used against him or against anybody else as evidence in the court of law and that he had right to remain silent. Accused Shivam got recorded his

statement in which he discloses mobile number as 8930507474 and that on 20/08/22 he had left from Gurugram in his Baleno car bearing registration number HR12AP5515 and met Lakshya and accused Kabir at Mohali and all left for Kasol where they took around in Shivalaya Guest House and on the next morning he and Kabir met Lucky and asked for Charas and that Lucky gave them 700 g of Charas per which he had paid Rs. 1 lakh 20 thousand to him and that a friend of accused Kabir asked him to take him also on the back and that mobile number of accused Kabir was 7015208359 and mobile number of Lakshya was 9876330243 and mobile number of accused Kaushal was 8700938685. Accused Shivam further disclosed that accused Kaushal and also purchased about 300 g of Charas and accused Kabir had purchased about 100 g of Charas and accused Lavish had purchased 14 g of Charas and that they had collected all the Charas and concealed in the Speaker and that Lakshya had also called to take him along on the way back. Accused Shivam in his statement had admitted the manner and factum of the recovery of Charas.

23. *That similarly accused Lavish was made to understand about the provisions of section 67 NDPS Act that his statement can be used against him or against anybody else as evidence in the court of law and that he had right to remain silent. Accused Lavish stated in his statement that he was 12th pass was running a restaurant and that his mobile number was 9671271076 and that he had reached Bhunter on 20/08/22 from Delhi on Volvo bus which he had taken on 19/08/22 and from Bhunter he had taken a taxi for Kasol readily stayed in a tent. Accused Lavish further stated in his statement that he met one Nepali person from whom he had purchased 14 g of Charas for a payment of Rs. 2000 and that he had also called accused Kabir during that time for taking in alongside on the way back. Accused Lavish in his statement had admitted the manner and factum of the recovery of Charas.*

24. *That in the same manner accused Kaushal was made to understand about the provisions of section 67 NDPS Act that his statement can be used against him or against anybody else as evidence in the court of law and that he had right to remain silent. Accused Kaushal stated in his statement that his mobile number was 8700938685 and that he had booked Volvo bus on 20/08/2022 from Ambala to Bhunter and after reaching Bhunter it took a taxi to Kasol and booked room in hotel Highland and that on 22/08/2022 he met accused Shivam who was staying in Shivalaya Guest House and that he had purchased about 300 g of Charas for a payment of Rs. 45,000 which was made in cash and had handed over the purchased Charas to accused Shivam for keeping with him. Accused Kaushal in his statement had admitted the manner and factum of the recovery of Charas.*

25. *That during investigation accused Kabir was also made to understand about the provisions of section 67 NDPS Act that his statement can be used against him or against anybody else as evidence in the court of law and that he had right to remain silent. Accused Kabir disclosed in his statement that he stayed at the house of his cousin as he had come to Mohali for admission consultancy at Amity University and that he had left with accused Shivam Naridal for Kasol in his car and both of them along with Lakshay stayed at Shivalya Guest House which is owned by a boy namely Lucky from whom he purchased under the of Charas for a payment of Rs. 40,000. Accused Kabir in his statement had*

admitted the manner and factum of the recovery of Charas.

26. *That after that Lakshay Chanana was made to understand about the provisions of section 67 NDPS Act that his statement can be used against him or against anybody else as evidence in the court of law and that he had right to remain silent. Lakshay Chanana stated in his statement the manner in which he visited Kasol along with his friend Shivam and Kabir and also about their stay at Shivalya Guest House and he came to know about Charas only when the car in which they were travelling was stopped by NCB and Sandeep Kumar Intelligence Officer disclosed about the secrets information and he also disclosed the manner in which the recovery was affected in his presence from the car and also disclosed his mobile number as 9876330243.*

27. *That on the basis of recovery and voluntary confessional statements U/s 67 of NDPS Act 1985, accused persons Shivam, Lavish, Kabir and Kaushal were arrested on 24.08.2022 after explaining them the grounds of arrest and arrest memos were prepared. The Jama Talashi was conducted. Jama Talashi memos were prepared.. The information of arrest of accused was given as per his request to their family members and memos in this regard were also prepared.*

28. *That the mobiles of accused persons Shivam, Lavish, Kabir and Kaushal and Lakshya were taken into possession and separate receipts in this regard were prepared.*

29. *That the custody of Lakshya Chariana was handed over to his father as prima facie his role was not found in the trafficking of seized Charas.*

30. *That the accused persons were got medically. examined on 25.08.2022 at Govt. Hospital Sector 16, Chandigarh and produced before the Ld. Chief Judicial Magistrate, Rupnagar, Punjab along with case property, inventory and relevant documents. LOT-A, LOT- B, LOT-C and LOT-D were opened after breaking open the NCB seal and six Court Samples of 25 gm each were taken out from LOT- A, LOT-B, LOT-C. LOT-D itself was taken as sample since there was insufficient quantity for taking separate samples. The remaining contraband in LOT-A and two Court samples i.e. Mark-A1 and Mark-A2, LOT-B and two Court samples i.e. Mark-B1 and Mark- B2, LOT-C and two Court samples i.e. Mark-C1 and Mark-C2 and LOT-D along with LOT-P and LOT-Pi were sealed with the Court seal bearing impression of 'APS'.*

31. *That Test Memo in triplicate was also prepared before the Court. Photographs of the sampling process were taken. The photographs were developed and certified by Ld. Chief Judicial Magistrate, Rupnagar, Punjab.*

32. *That accused Shivam, Kaushal, Kabir and Kabir were reinanded to NCB remand for two days and the NCB team along with recovered case property and accused persons came to the NCB office, Chandigarh for further proceedings.*

33. *That after coming back at NCB office, case property including the samples was deposited with the Officer in-charge of Godown of NCB Chandigarh. The copies of Test memo were also provided to the Officer in-charge.*

34. That Sandeep Kumar, I.O submitted the report U/s 57 of NDPS Act, 1985 regarding seizure to the Meera Kumari Meena, Superintendent, NCB on 24.08.2022.

35. That Karamvir Singh, I.O submitted the report U/s 57 of NDPS Act, 1985 regarding arrest to the Meera Kumari Meena, Superintendent NCB Chandigarh on 26.08.2022.

36. That during the remand period, further statements of the accused Shivam, Kaushal, Kabir and Kabir were recorded. In his statement dated 25.08.2022, accused Shivam divulged information about his bank accounts and land etc. for the purpose of financial investigation under Chapter VA of the NDPS Act and also disclosed more information about other accomplice. Similarly, accused Kaushal, Lavish and Kabir also disclosed about his bank accounts and ownership of vehicle.

37. That the medical examinations of the accused persons were conducted in Government Hospital, Chandigarh.

38. That accused Shivam, Kaushal, Kabir and Kabir were produced before the Hon'ble Court Chief Judicial Magistrate, Rupnagar, Punjab on 26.08.2022 and accused were sent in judicial custody to Distt. Jail, Rupnagar, Punjab.

39. That a letter was written to the Superintendent, NCB, Sub Zone Mandi, HP for follow up action in connection with NCB crime No.54/2022 qua accused Lucky owner of Shivalya Guest House, Kasol, Distt. Kullu, HP. On 25.08.2022 the NCB officials went to Guest house of accused Lucky owner of Shivalya Guest House, Kasol, Distt. Kullu, HP and his guest house search was conducted by Ashok Kumar Prajapati, IO, NCB, Sub-Zone Mandi, HP. During the search the Panchnama of House search was drawn and the witness and family member present during the search appended their signatures.

40. That a letter no.NCB/CZU/Cr.No.54/2022/2132 dated 26.08.2022 was written to the Zonal Director, Narcotics Control Bureau, Delhi Zonal Unit for follow up of Shivam, Kaushal, Lavish and Kabir. The house searches were carried out and certain documents were taken into possession. Respective Panchnama were also prepared.

41. That sample packet marked as Mark as A1, B1, C1 and D1 along with two copies of Test Memos having facsimile impression of the Seal 'APS' were sent to the Chemical Examiner, C.R.C.L, New Delhi vide letter No. NCB/CZU/Cr. No.54/2022/2131 dated 26.08.2022 through Rakesh Kumar, Sepoy, PIC No. NCB/4633 and their receipt vide CRCL Dy. No. 309 dated 26.08.2022 was obtained which was deposited with NCB office vide Dy. No. 3581 dt. 01.09.2022.

42. That the Chemical Examination Report No- CLD-1946 to 1949(N) dated 26.08.2022 from the CRCL, New Delhi was received in the office on 07.11.2022, Dy.No.4472. The report confirmed the presence of Charas in the sample. The report in original is attached with this complaint.

43. That copies of Test report were sent to Superintendent Jail, Rupnagar, Punjab for serving of reports to the accused and report was received.

44. That on 02.09.2022 a letter written to the Superintendent of Police, Distt. Rothak, Haryana for intimation of arrest and requisition for criminal record of accused Shivam and report are still awaited.

45. That on 02.09.2022 a letter written to the Superintendent of Police, Distt. Gurugram, Haryana for intimation of arrest and requisition for criminal record of accused Kaushal and report was received. No other case is found to be registered against him.

46. That on 02.09.2022 a letter written to the Superintendent of Police, Distt. Karnal, Haryana for intimation of arrest and requisition for criminal record of accused Lavish and Kabir and report are still awaited.

47. That a letter was written to the RTO, Distt. Rothak, Haryana for providing the details of seized vehicle no.HR12AP 5515 on 02.09.2022 through speed post. Further reminder on 24.01.2023 was also send to RTO office, Distt. Rothak, Haryana and email was send on 24.01.2023. The reply was received.

48. That as stated above, accused Shivam had disclosed about Lucky and his mobile number, as supplier of the seized contraband. Accordingly a notice u/s 67 issued in the name of Lucky, owner of Shivalaya Guest House, Kasol, Distt. Kullu, HP for giving him an opportunity to join the investigation in the case and to appear before the Intelligence Officer at NCB office, Chandigarh on 05.12.2022 but he did not join the investigation. Copies of notice u/s 67 of NDPS Act 1985 and summon sent by "SPEED POST" are attached.

49. That second time notices u/s 67 were issued in the name of Lucky owner of Shivalaya Guest House, Kasol, Distt. Kullu, HP for recording of their statements in the case and to appear before the Intelligence Officer at NCB office, Chandigarh on 10.01.2023 but again he did not join the investigation.

50. That letter for obtaining CAF & CDR was sent to the Nodal Officer of Reliance IO on 07.09.2022 in r/o the mobilenumber-9671271076, 7015208359, 8930507474, 8700938685 related to arrested accused and supplier as provided by the accused in their voluntary statement. Further reminder letters for obtaining CAF & CDR were sent to the Nodal Officer of Reliance IO in ro the mobile number-9671271076,7015208359,8930507474, 8700938685 and report was received on 10.09.2022 and documents are attached in the final complaint.

51. That the CDR analysis revealed that there are sufficient communication between Shivam, Lavish, Kabir and Koushal. After analysis of CDRs all accused were found connected with each other. The details of the same are as under :-

52. That a letter was sent to Nodal Officer of BHARTI AIRTEL Ltd for CAF and CDR of mobile no-8570020028,9876330243 and report was received and CDR, CAF copy are attached in the final complaint.

53. That on 23.01.2023 a letter written to the Director, Central Forensic Science Laboratory, Chandigarh request for

analysis and supply of data of reoovered mobiles and SIMS cards and providing 65-B Certificate and were sent to C.F.S.L, Chandigarh vide letter No. NCB/CZU/Cr. No.54/2022/249 dated 23.01.2023 through Nand Singh Shekhawat, Sepoy, and their receipt vide CFCL Chandigarh Dy. No. CFSL(CHD)/324/FC/54/23 dated 23.01.2023. The reports are awaited and same shall be placed on record as soon as these are received.

54. *That on 08.02.2023 Notices U/s 67 of NDPS Act, 1985 were served to independent witnesses ASI Teluram, Belt No.911 and ASI Mohanlal, Belt No.895R, Thana Singh Bhagatpura and both independent witnesses have tendered their voluntary statements reconfirming the manner and factum of the seizure affected by Narcotics Control Bureau, Chandigarh under Crime NO. 75/2020 on dated 29.12.2020.*

55. *That accused Shivamhas filed ari application in Hon'ble High Court, Punjab& Haryana Chandigarh for interim bail in CRM-M 55667/2022 and Hon'ble High Court Punjab & Haryana Chandigarh allowed interim bail of accused Shivam on 31.03.2023.*

56. *That Lucky owner of Shivalaya Guest House, Kasol, Distt. Kullu, HPis the supplier of part of seized Charas and has not joined the investigation despite issuance of notices to him. Moreover, the proceeding by NCB is already in his knowledge as a team of NCB had searched his premises. So there is no other efficacious way available other than issuance of Non Bailable Warrant against Lucky owner of Shivalaya Guest House, Kasol, Distt. Kullu, HP.*

57. *That the present complaint is being filed against the accused Shivam, Kaushal, Kabir, Lavish and Lucky. Further investigation regarding the conspiracy behind trafficking of Illiolt Charas and the other suspected persons involved is going on. Moreover, the reports of data extraction of mobiles of accused and also of LakshayChanana are also pending and the same shall be placed on record as soon as these are received. On receipt of mobile data or any other document or information, if the role of any other person is found then NCB reserves its rights to proceed accordingly and additional/supplementary/separate complaint shall be filed in that regard.*

58. *That all the documents prepared and/or procured during the investigation form part of this complaint and have been annexed in original with this Complaint. The same shall be proved during the evidence.*

59. *That from the facts stated above it is clear that accused Shivam, Kaushal, Kabir and Lavish purchased the seized Charas and accused Lucky was one of the suppliers and accused Shivam, Kaushal, Kabir and Lavish were trafficking the seized 1.114 KGs Charas in criminal conspiracy with each other without any permission, authority or licence, and seized Charns which is of Commercial Quantity, was recovered from conscious possession of accused Shivam, Kaushal, Kabir and Lavish as detailed above, while in illegal transit from H.P. to Haryana. The car from which the recovery was affected i.e. the car bearing registration number; HR12AP-5515, owned by accused Shivam was allowed to be used*

for illegal trafficking of Charas. Therefore they have contravened the provisions of section 8 of NDPS Act and which is punishable u/s 20, 25, 28, 29, 60 and 62 of NDPS Act, 1985. The guilt of the accused persons would be established by the oral testimony of the witnesses, the case property, documents and the report of Chemical Examiner.

60. *That accused Lucky has not co-operated with investigation of this case and instead he is evading the investigation of this case and the evidence show that he was actively involved with the arrested accused in sale and conspiracy of transporting, possessing of Charas without any lioit document and necessary process may be issued against him for bringing the aforesaid Lucky before the Hon'ble Court for facing trial of this case.*

59. *That from the facts and circumstances stated in the forgoing paragraphs it has be established that the seized contraband and the vehicle owned by accused Shivam are liable for confiscation u/s 60 and 62 of NDPS Act, 1985. The vehicle bearing registration number HR12AP 5515 is liable to be confiscated as per provision of section 60 of the NDPS Act, 1985, for being used for transportation of seized Charas.*

60. *That furthermore presumption u/s 35 and 54 of the NDPS Act 1985 attracted against the accused persons.*

61. *That the remand papers of accused n^o. 1 to 4 are pending before this Hon'ble Court and also this Hon'ble Court has territorial jurisdiction over the present complaint case u/s 36A of the NDPS Act.*

62. *That the relevant documents and the goods seized would be submitted before your Honour at the time of trial for making exhibits and complainant craves leave of this Hon'ble Court to file supplementary complaint if any after filing the complaint.*

The complainant humbly prays that Your Honour may be pleased to admit this Complaint in connection with this case and be pleased to issue process against the absconder acoused namely Lucky and upon his arrest, after recording the statements of the listed witnesses be pleased to punish the accused person Shivam, Kaushal, Kabir, Lavish and Lucky for violation of section 8(c) of NDPS Act, 1985, and punishable u/s 20 b (li)(c), 25, 28 and 29 of NDPS Act, 1985 as per the provisions of the law.

It is further prayed that the vehicle bearing registration number HR12AP 5515 may kindly be confiscated as per provision of section 60 of the NDPS Act, 1985, being used for transportation of seized Charas.

It is also further prayed that the complainant being a public servant, he may be exempted from personally attending the court each and every date unless specially called for and for this act of kindness the complaint as is duty bound shall ever pray."

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 prays for bail on medical grounds 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 relevant to refer to the following portions of the reply dated 04.10.2024, filed by SSP, Ferozepur, which read as follows:

"10. That it is pertinent to mention here that the present petitioner was allowed interim bail on the ground of the treatment of his wife, where he produced medical certificates from two different hospitals i.e. on the first instance he produced medical certificate issued from Apollo Hospital, New Delhi. On the second instance he produced medical certificate Rohtak Civil Hospital, Haryana. On third instance he produced medical certificate which was issued from Sector 16, Govt. Hospital, GMSH, Chandigarh. On fourth instance he produced medical certificate which is issued from Apollo Hospital, New Delhi and Yashoda Super Speciality Hospitals, Ghaziabad, U.P. which was verified. But, now in the present petition he is producing Doctor's medical prescription of Fortis Hospital, Mohali, Punjab and for taking concession of interim bail.

12. That as such the present case comes under the strict provisions of Section 37 of the NDPS Act as far as the provision of bail is concerned. The petitioner was working in a very planned manner with other co-accused and in case bail is granted to the petitioner, he shall indulge in similar activities as he has in-depth experience & knowledge of the illegal trade."

8. 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.

9. The petitioner's medical condition is critical, so the rigors of S. 37 cannot override the priority of taking care of these conditions.

10. The medical record confirms the need to take extra precautions because of medical conditions, which, in the given facts, can be taken care of at home by the family members or by admitting him to the hospital at their end and attending to the petitioner for all such medical assistance by his close circle. For now, the petitioner has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

11. Without commenting on the case's merits, only because of the petitioner's medical condition, in the facts and circumstances peculiar to this case, does the petitioner make a case for bail. This order shall come into force from the time it is uploaded on this Court's

official webpage.

12. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on interim bail for a period of three months i.e. 28.10.2024 to 27.01.2025 in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

13. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

14. This order is subject to the petitioner's complying with the following terms.

15. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

16. The petitioner shall attend the trial and, if not possible, inform the court well in advance seeking exemption from personal appearance or attendance through video conference. The petitioner's counsel shall put signatures on his behalf, and the petitioner shall not claim any prejudice in this regard at any stage before any Court.

17. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of

acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

18. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

19. Petitioner shall surrender in the Jail from where he would release on 27.01.2025 upto 05:00 P.M.

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. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

22. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

25.10.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.