

224 IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CRM-M No.54322 of 2023
Reserved on: 09-01-2024
Pronounced on: 15.01.2024

Harish Bhatia ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Kumar Passi, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Addl.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
344	13.07.2020	City Barnala, District Barnala	22 of NDPS Act, 1985 (Sections 25, 29 of NDPS Act added later on), Sections 7, 13 of Prevention of Corruption Act, 1988 and Sections 465, 467, 468, 471, 120-B, IPC

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, on the allegations of dealing in psychotropic substances has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 14 of the bail application, the accused declares the criminal antecedents, and even the reply and the custody certificate mention the history, overall as follows:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	72	23.05.2020	Under Sections 21, 22, 25, 29 of NDPS Act, 1985	Mehal Kalan
2.	95	25.02.2020	Under Sections 22, 25, 29 of NDPS Act, 1985 and Sections 465, 467, 468, 471, 120-B IPC, 1860	City Barnala
3.	98	13.07.2020	Under Sections 22, 25, 29 of NDPS Act	Tapa
4.	33	12.06.2020	Under Sections 8, 21, 22, 29 of NDPS Act, 1985	NCB, Chandigarh

3. Petitioner's counsel prays for bail by imposing any stringent conditions and states that they would have no objection to the conditions, i.e., surrender of weapons, and are also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, if any, and within fifteen days undertakes to disconnect all other mobile numbers. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

5. The facts of the case have been taken from reply dated 25.11.2023 which reads as follows:

"2. That the brief facts of the case are that the instant FIR No.344 dated 13.07.2020 u/s 22 NDPS Act, P.S City Barnala was initially registered against Palo Kaur wife of Amar Singh r/o Barnala, on the basis of a secret information. During investigation from said Palo Kaur 58 strips, total 580 intoxicant tablets Clovidol 100-SR, were recovered. During investigation Gaurav Aggarwal S/o Bandke Lal r/o 15/206 Satta Gali, Nuri Gate, Agra (UP) and Dhirender Singh Rathore S/o Hakam Singh Rathore, r/o F/752/2, Janta Quarter, near Kamlesh war Mandir, Agra (UP) were nominated as accused on 14.07.2020. That during investigation, Gaurav Aggarwal and Dhirender Singh Rathore were arrested on 14.07.2020 and 165 intoxicant vials, 7292 intoxicant capsules, 1000 intoxicant tablets and Rs. 35,000/- as drug money and car No. HR-20AC-3432 was recovered from their possession. During investigation Dhirender Singh Rathore got recovered 5,70,000 tablets of Alprasafe 0.5 mg and 7500 vials of leagesic which were lying in the Godown of Prince Delivery Agency, Mau Gate Niklson Road Delhi, u/s 27 of Evidence Act. Then on 20.07.2020 during investigation Raghu Raja S/o Jay Kumar r/o Old Avenue, H.No.268, Jandiala Guru, Amritsar, Vikas Mangal S/o Suresh Kumar r/o H.No.1307, ward No.13, Gali No.11, Vedant Nagar, Moga (now Gali No.4, Vedant Nagar, Moga) Moga, and Kapil Arora were nominated as accused in the present case. During investigation Gaurav Aggarwal got recovered 1,08,000/- Alprazolam tablets from PTC Prince Transport, Bailany (Agra) and Raghu Raja was arrested and on the basis of his disclosure statement, total 50,000 intoxicant tablets of Clovidol 100-SR, total 40,000 intoxicant tablets of Alprazolam (Alko-1) and Rs.48,58,800/- as drug money were recovered on 21.07.2020. On 22.07.2020 Vikas Mangal was arrested and the petitioner Harish Bhatia @ Raju Sachdeva s/o Subash Bhatia r/o North Delhi, Gaurav Arora and Krishan Kumar Arora were nominated as accused in the present case. On 23.07.2020 Vikas Mangal made statement u/s 27 Evidence Act and got recovered 10000 intoxicant tablets, 24000 intoxicant capsules & 11,75,000 drug money and Harish Bhatia @ Raju Sachdeva, has been arrested. On 28.07.2020 the petitioner Harish Bhatia made statement u/s 27 of Evidence Act and on the basis of disclosure statement 4000 intoxicants vials and 4000 clean kits were recovered at Anu Road Carrier Transport Delhi.

3. That on dated 22.9.2020 accused Gaurav Kumar Arora s/o Krishan Kumar Arora r/o Delhi and Jatinder Kumar Arora s/o Ramesh Kumar Arora r/o Agra has been arrested. On dated 13.10.2020 accused Krishan Kumar Arora has been arrested. On dated 15.10.2020 made disclosure statement u/s 27 Evidence Act and was recovered ONE LAPTOP, C.P.U. etc. from his office Primatpur Mohalla New Delhi. On the interrogation of above-said Krishan Kumar Arora, Gaurav Kumar Arora and Jitender Kumar accused Surjit Singh was nominated and section 7,13 PC Amendment Act 2018 was added. On 18.10.2020 SI Surjeet Singh was arrested by Sh. Ramninder Singh Deol PPS Deputy Superintendent of police, Barnala along-with police party. During investigation on dated 21.10.2020 Surjit Singh made disclosure statement u/s 27 Evidence Act and was recovered 2 lacs from garage which is backside of his residence home H. no. A-21, Officer colony Civil Lines Bathinda.

4. **Role of petitioner Harish Bhatia @ Raju Sachdeva:** On 22.07.2020 on the basis of further interrogation of Gaurav Aggarwal and Dhirender Singh Rathore the petitioner Harish Bhatia @ Raju Sachdeva s/o Subhash Bhatia r/o North Delhi etc., were nominated as accused in the present case. On dated 23.07.2020 the petitioner has been arrested from the learned Illaqa Magistrate, Barnala, as the petitioner has already been in judicial custody in another case FIR No.72 dated 23.05.2020 u/s 21,22, 25, 29, 61, 85 of NDPS Act and 467, 468, 471, 120-B P.S. Mehal Kalan. During interrogation, on 28.07.2020 the petitioner made statement under Section 27 of Evidence Act and on the basis of disclosure statement of the petitioner 4000 intoxicant vials and 4000 clean kits were recovered at Anu Road Carrier Transport Delhi. In this way recovery effected from the possession of petitioner in the present case falls within provisions of commercial quantity."

Reasoning:-

6. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

7. While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness 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 prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised

and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

8. Counsel for the petitioner submits that at the time of recovery, the petitioner was in custody in other case. He further submits that the petitioner is entitled to bail on merits as well as prolonged custody which is more than 03 years. He further submits that there is a long list of 100 witnesses and on one pretext or the other, one reason or the other, witnesses are not turning up which is delaying the trial and the petitioner cannot be kept in jail indefinitely.

9. Mr. Gaurav Garg, learned Addl. A.G. appearing for the State of Punjab submits that the State is making every effort to conduct the trial and they cannot be blamed for the delay in trial. He further submits that the petitioner is member of a drug mafia and has 04 more cases pending against him. State does not refute that the petitioner's custody is more than 03 years. In this case, the custody period of the petitioner is 03 years and 04 months.

10. As per the custody certificate dated 27.11.2023, the petitioner's total custody is 03 years 03 months and 23 days. Although the petitioner has criminal antecedents but indisputably has spent more than three years in pre-trial custody in this FIR. Thus, he is entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023, not because his custody is of two years and six months but because his custody is more than three years and considering the quantity involved in the earlier cases, the criminal history should not come as a hindrance.

11. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal v. State (NCT of Delhi), **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

13. In Madhu Tanwar and Anr. v. State of Punjab, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

14. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the similar amount.

- (c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.
- (d). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail order.
- (e). While furnishing personal bond, the petitioners/applicants shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number of an Indian citizen, (If available), when the court deems appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

17. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the police, or the court, or to tamper with the evidence.
18. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order or in earlier orders. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.
19. The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release

from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

20. 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, 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 offence.

21. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated

in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

22. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the society. 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."

23. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

24. If the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

25. Notwithstanding anything mentioned above, this bail is subject to the strict conditions that if petitioner remain absent for even single day without any justifiable cause, on this ground alone, it shall be permissible for the Sessions Court /trial Court to cancel the bail and there shall be no need further for the State to approach this Court to file an application for cancellation of bail.

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

27. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

28. *There would be no need for a certified copy of this order 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. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

15.01.2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No.