

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.51384 of 2024
Reserved on: 06.11.2024
Pronounced on: 20.11.2024

Ravinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. A.K. Verma, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
168	12.07.2024	Gharinda, Amritsar Rural	21 of NDPS Act, 1985

1. The petitioner upon incarcerated in the FIR captioned above has come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 16 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On July 12, 2024, based on secret information, the Police seized 1 kg of ICE drug from the Armrest of an Innova Car in which the petitioner, along with his co-accused, was driving. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. 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.
5. The State's counsel opposes bail and refers to the reply.
6. It would be appropriate to refer to the following portions of the reply, which read

as follows:

Role of the petitioner

- 3. That on finding the information credible, the nakabandi was conducted at Rajatal and one Innova Car No. PB03-AW-3890 was seen coming. which was signaled to stop and the petitioner and co-accused Dharampreet Singh were apprehended by the investigating officer and both the petitioner and co-accused Dharampreet Singh got recovered one kilogram ICE drug from the armrest of Innova Car in the presence of the then Deputy Superintendent of Police, Sub-division Attari, Amritsar (Rural) in compliance with section 50 NDPS Act.
- 4 That during his custodial interrogation, the co-accused Dharampreet Singh suffered a disclosure statement dated 15.07.2024 disclosing therein that he and the petitioner Ravinder Singh had procured heroin from Kuldeep Singh, son of his paternal aunt, to sell it further to his known customers. On the basis of the aforesaid disclosure statement dated 15.07.2024, the co-accused Kuldeep Singh was nominated in the present case and section 29 NDPS Act was registered vide G.D No. 16 dated 15.07.2024.
- 5. That the co-accused Kuldeep Singh is absconding to avoid his arrest and could not be arrested despite of repeated efforts made by him by conducting raids at his house and other hideouts.

Evidence against the petitioner

- 6. That the petitioner and co-accused Dharampreet Singh are actively involved in selling intoxicant substances and one kilogram of ICE drug was recovered jointly from the Innova Car driven by the co-accused Dharampreet Singh and petitioner was sitting on the side seat. The ICE drug recovered from the petitioner and co-accused Dharampreet Singh fall within the ambit of commercial category.

Name and Total Weight of Contraband

- 7. That it is humbly submitted that the report from the Regional Forensic Laboratory, Amritsar has not yet been received to ascertain the exact name of the drug recovered from the petitioner and co-accused Dharampreet Singh but from the bare perusal of the contraband, drug is found to be ICE and the total weight of the contraband is one kilogram.”

7. Dealing in 1 kg of Ice is a punishable offense under the NDPS Act in the following terms:

Substance Name	METAMFETAMINE/ Ice/ Meth
Quantity detained	1000 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	2000.00%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1055(E)
Dated	10/19/2001
Sr. No.	159
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	METAMFETAMINE
Other non-proprietary name	methamphetamine
Chemical Name	(±)-(S)-N,α-dimethylphenethylamine,(+)-2-methylamino-1-Phenylpropane
Small Quantity	2 Gram
Commercial Quantity	50 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	NDPS Act, 1985 (61 of 1985), S.O. 821(E)
Dated	11/14/1985
Sr. No.	19
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	METHAMPHETAMINE
Other non-proprietary name	*****
Chemical Name	(+)-2-Methylamino-1-phenylpropane

8. The quantity allegedly involved in this case is 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. The petitioner’s counsel referred to the following paras of the bail petition:

- “3. That it is the humble submission of the petitioner that he is completely innocent and has been falsely implicated in the present false and frivolous case. In fact, the petitioner has got nothing to do with the alleged occurrence and the petitioner in fact does not even know the co accused & is not related in any way to the present occurrence. The petitioner who was on foot and merely a passerby had actually asked for a lift from co-accused who was driving in his car and was passing by the petitioner. The petitioner neither knew the co- accused nor is in anyway related to him and he only asked for a lift from co- accused because of which he is behind bars at the present moment despite being innocent.*
- 4. That it is pertinent to note over here that the innocence of the petitioner is well established from the fact that during the investigation of the present case after the arrest of both the accused, their Police remand was obtained & co- accused Dharampreet had specifically stated in his disclosure*

statement to the investigating agency that in-fact the aforesaid narcotic substance which has been recovered was obtained & brought by him from his brother namely Kuldeep Singh son of Joginder Singh and he was supposed to sell this further and the money earned from such sale would be distributed between him and aforesaid Kuldeep Singh. In- fact aforesaid Kuldeep Singh was then arrayed as a co-accused in the present case also. Copy of such disclosure and remand application wherein such facts have been mentioned are annexed herewith as Annexure P-2 & P-3.

5. *That from the perusal of the facts as mentioned above including the disclosure of co-accused Dharampreet which is the part of the investigation actually conducted by the investigating agency themselves it is substantially clear that (A) The Car in which petitioner was travelling belonged to co-accused Dharampreet (B) The narcotic which was allegedly found in the Arm rest was obtained by co-accused from his brother in which petitioner had no role to play & (C) That even after selling such narcotic the money which would have been earned was to be distributed between co-accused Dharampreet and his brother.*
6. *That all of these facts clearly point out to one thing that in this entire occurrence only a people are connected and involved Le., the co-accused Dharampreet who obtained such narcotic from his brother co-accused Kuldeep Singh and even the money was to be distributed among them. Thus even as per the investigation conducted by the Police, the Petitioner has got nothing to do with such occurrence in which the alleged narcotic has been recovered & the petitioner does not in any way is connected with both of the co-accused. The petitioner who was merely an innocent passerby is behind bars only for asking for a lift completely unknown to all the aforesaid facts regarding carrying of narcotics by co-accused.”*

10. The petitioner did not mention the reasons for taking a lift in the vehicle of the co-accused, and such a sketchy explanation cannot discharge the burden placed by the State on an accused under S. 37 of NDPS Act.

11. 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.

12. 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. AhmadalievaNodira, (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.

13. 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.

14. The petitioner shall be permitted to file a bail after the decision of the representation P-4. The concerned Police Officer will decide on the said representation by passing a speaking order on priority and convey its outcome to the petitioner and the sender.

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

16. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

20.11.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.