

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-52710-2024
Reserved on: 11.11.2024
Pronounced on: 26.11.2024

Ram Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Tanveer Singh, Advocate
for the petitioner.

Mr. Akshay Kumar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
16	11.02.2024	Kamboj, District Amritsar	21(B), 25, 61 of NDPS Act (Section 26, 29 of NDPS Act added later on)

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail.

2. In paragraph 21 of the bail petition, the accused declares that he has no criminal antecedents, but as per paragraph 8 of the status report filed by the State, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	158	09.09.2023	21 of the NDPS Act	Kambo, Amritsar (Rural)

3. The facts and allegations are taken from the status report filed by the State. On Feb 11, 2024, based on chance recovery, the Police seized 200 grams of heroin from the possession of the main accused, Sahib Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. During the custodial interrogation, Sahib Singh named the petitioner as the seller of heroin, and based on such confession, the police arrested the petitioner.

5. 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.

6. The State’s counsel opposes bail and refers to the status report.
7. It would be appropriate to refer to the following portions of the status report, which read as follows:

“Role of the petitioner
3. That during the investigation, the co-accused Sahib Singh suffered a disclosure statement dated 15.02.2024, disclosing therein that he had purchased the 200 grams of heroin from Ram Singh (petitioner) at the rate of Rs. 1600 per grams and he was going to sell the aforesaid heroin at the rate of Rs. 1800 per grams. On the basis of the aforesaid disclosure statement dated 15.02.2024, the petitioner was nominated in the present case and section 29 NDPS Act was added vide G.D No. 12 dated 15.02.2024.

Evidence against the petitioner
5. That the only evidence against the petitioner which connects him with the present case is the disclosure statement of the co-accused Sahib Singh, wherein he had stated that he had purchased heroin from the petitioner.”

8. Dealing in 200 grams of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	200 Gram
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	80.00%

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.	56
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin
Other non-proprietary name	*****
Chemical Name	Diacetylmorphine
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	11/14/1985
Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****

Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

9. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

10. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

11. In Sami Ullaha v Superintendent Narcotic Control Bureau, (2008) 16 SCC 471, the Hon’ble Supreme Court holds that in intermediate quantity, the rigors of the provisions of Section 37 may not be justified.

12. Thus, the evidence collected so far consists of disclosure statements without any discovery of fact.

13. In Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

14. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband. No other evidence is collected at this stage to connect the petitioner with the main accused. Thus, there is no justification to deny bail.

15. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, per paragraph 17 of the bail petition, the petitioner has been in custody since 04.09.2024 and his custody in this FIR is around 2½ months. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

16. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

17. 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. This order shall come into force from the time it is uploaded on the official webpage of this Court.

18. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail 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.

19. 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)	

20. This order is subject to the petitioner’s complying with the following terms.

21. 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.

22. 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 elaborate 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.

23. 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.

24. This bail is conditional, and the foundational condition is that if the petitioner repeats the offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

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

26. 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.

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

(ANOOP CHITKARA)
JUDGE

26.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.