

CRM-M-58728-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.58728-2023
Reserved on: 04.07.2024
Pronounced on: 23.07.2024

Rajbir Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amandeep S. Manaise, Advocate
for the petitioner.

Mr. G.S. Bhullar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
159	20.07.2023	Ranjit Avenue, District Amritsar	21B, 25, 27A, 29 of NDPS Act; 25 and 27 of Arms Act

1. The petitioner incarcerated for delivering 100 grams of heroin to accused namely Manpreet Singh who had further delivered it to Gurjit Singh, from whose possession the police had recovered 100 grams heroin, has come up before this Court under Section 439 CrPC seeking regular bail.
2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
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. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family. The petitioner’s counsel seeks bail on the ground of that the petitioner remained in custody since from 09.08.2023 to 28.11.2023 when he was released on interim bail and there is no evidence except that of disclosure statement.
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 intermediate category and also that petitioner had earlier sold 10 kgs of heroin to Gurjit Singh which involved the commercial quantity.

5. The facts of the case are being taken from reply dated 19.02.2024 which reads as follows:

"3. That it is submitted that as per report furnished by In-charge CIA Staff-1, Amritsar, on 20.07.2023, Al Shamsher Singh along with other police officials posted at Anti Gangster Staff Amritsar in connection with patrolling and in search of bad elements was present at Anand Park, Ranjit Avenue, Amritsar. There ASI Shamsher Singh received secret information that Manpreet Singh @ Mannu Ghanshampuriya and Bulwinder Singh @ Doni S/o Harbans Singh along with their other associates are involved in trading of heroin in Punjab and other States and their one associate Gurjit Singh son of Rajinder Singh, resident of House No. 378, Housing Boat Colony, C block Ranjit Avenue, Amritsar, who was already involved in FIRs of heroin smuggling and as per directions of Manpreet Singh @ Mannu Ghanshampurua, he was coming on foot at Ranjit Avenue C-block market for supply of heroin to some party, who can be apprehended with heroin and drug money. As the aforesaid information was true, cogent and reliable, hence, based upon thereof 'Ruqa' sent by ASI Shasmher Singh, the aforesaid FIR No. 159 dated 20.07.2029, under Section 21, 27A NDPS Act, PS Ranjit Avenue, Amritsar was registered.

4. That thereafter on the same day ie. 20.07.2023, pursuant upon the aforesaid information, the accused Gurjit Singh son of Rajinder Singh who was coming from Housing Board Colony, was apprehended by the police party and his personal search was conducted in presence of Gurinderpal Singh, PPS, then Assistant Commissioner of Police, Detective, Amritsar in accordance with law, during which two mobile phones were recovered from his possession. During custodial interrogation, the accused Gurjit Singh s/o Rajinder Singh suffered disclosure statement that he has been indulging in trading of heroin and he has purchased one Swift car No. PB02-CD-1218 from drugs proceeds which was parked outside his house. In addition to this, he has earned Rs. 03 lakhs from drug proceeds and this drug money along with 100 GM of heroin was lying in one almirah in his residential house and can get it recovered. Therefore, on the basis of disclosure statement of the accused Gurjit Singh S/o Rajinder Singh, 100 GM of heroin and drug money Rs. 03 lakhs were recovered from one almirah his residential house and the aforesaid car Swift No. PB02- 1218 was recovered from outside his house, which were taken into police possession in accordance with law and the accused Guriit Singh s/o Rajinder Singh was arrested in the aforesaid case FIR No. 159/2023 (supra) accordingly."

6. Role and evidence against the petitioner as mentioned in paragraph 7 of the reply reads as follows:

"7. That thereafter during investigation the accused Gurjit Singh S/o Rajinder Singh made further disclosure statement on 22.07.2023 that the present petitioner Rajbir Singh @ Doctor S/o Surinder Singh R/o Village Kandowali, Amritsar has supplied him about 10 KG of heroin since December 2022 up till now sent by the accused Manpreet Singh @Mannu Ghanshampurua and

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Balwinder Singh @ Doni and the drug proceeds thereof was paid to the present petitioner Rajbir Singh. Therefore, the present petitioner Rajbir Singh @ Doctor was also nominated as co-accused and offence under Section 29 of the NDPS Act was added. "

7. An analysis of the above said arguments lead to an outcome that in the present case, the recovery of heroin is 100 grams from Gurjit Singh falls in the category of intermediate quantity. Further evidence is regarding the sale of 10 KG heroin on earlier occasions is a separate offence that cannot be included and counted in the present FIR because both are distinct offences. Moreover, no evidence qua said contraband produced in this case, nor any separate FIR etc., represented only the bald statement of co-accused as there is nothing on record qua the said contraband. Similarly recovery of pistol from the Gurjit Singh cannot be attributed to the petitioner for the purposes of bail. Prima facie, there is no evidence that Rs.3.00 lacs was drug money which relates to petitioner.

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

9. 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 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, which specify an offence, also 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 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.

10. 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.

11. 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.

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

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this Court.

12. 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.

13. 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

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permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for a 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, (If available), when the attesting officer/court thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

14. 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.

15. 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.

16. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detecton squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the

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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.

17. 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.

18. The conditions mentioned above imposed by this court are to endeavour to reform and the accused does not repeat the offence, and also to block the menace of drugs 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. 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.

20. If the petitioner finds the bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the

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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.

21. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

22. 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.

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

24. *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

23.07,2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No.