

9.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.59724 of 2023
Reserved on: 11.07.2024
Pronounced on: 30.07.2024

Arashdeep Singh @ Fauji

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:

HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:

Mr. A.P.S. Sandhu, Advocate
for the petitioner.

Mr. Jasjeet Singh Dhaliwal, Assistant Advocate General, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
64	04.07.2022	Verka Police Commissionerate Amritsar	411, 414 IPC and Sections 21, 22, 25, 29 of NDPS Act 1985 and Section 25(8) of Arms Act, 1959 (Section 27-A of NDPS Act 1985 added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973 read with Section 482 Cr.P.C., seeking regular bail.

2. In the bail application, the petitioner is silent about criminal antecedents. However, as per custody certificate dated 05.02.2024, the accused is involved in following cases:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	75	25.04.2023	336, 424, 148, 149 IPC and Sections 25, 54, 59 of Arms Act	Contonment
2.	254	07.11.2021	21-B, 29, 61, 85 of NDPS Act, Section 25 of Arms Act	Contonment
3.	200/22	12.07.2022	21-C, 61, 85 of NDPS Act, Sections 25, 54, 59 of Arms Act	Contonment
4.	198	11.07.2022	21-B, 29, 61, 85 of NDPS Act	Contonment
5.	36	13.02.2022	323, 324, 325, 148, 149 IPC	Gate Hakima
6.	178/22	27.12.2022	21-C, 24, 61, 85 of NDPS Act	Majitha Road
7.	124	15.12.2022	25, 54, 59 of Arms Act	City Morinda



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8.	136	10.05.2022	21, 61, 85 of NDPS Act, 1985	Contonment
9.	139	09.08.2020	323, 336, 506, 34 IPC and 25, 27, 54, 59 of Arms Act	Contonment
10.	154	27.08.2020	307, 506 IPC	Contonment
11.	398/22	01.01.1900	42, 52-A, Prison Act	Islamabad
12.	107/ 2019	01.01.1900	336 IPC	Contonment

3. The facts of the case are being taken from reply dated 23.05.2024 and the relevant paragraph(s) of the same reads as follows:

"3. That the brief facts of the aforesaid case/FIR No. 64/2022 (supra) are that the aforesaid FIR No. 64/2022 (supra) was registered on the basis of the secret information received by S.I Gulwinder Singh, In-charge of Police Post Milk Plant, Police Station Verka, Amritsar that Sajan Kalyan @ Daddu S/o Jgdish Raj R/o Navibabadi, Faizpura, Amritsar, Amarjit Singh @ Mithu S/o Kulwant Singh R/o Sanjay Gandhi colony, FGC road, Amritsar, Navkaran Singh @ Nav Pandori S/o Davinder Singh R/o Village PandoriWarraich, Amritsar, Manjeet Singh @ Jojo S/o Sunny Ram R/o Khand Wala, Sher Shah Suri road, Chheharta, Amritsar along with their other associates are involved in smuggling. They get smuggled heroin, other narcotics substances and weapons secretly from Pakistan and supply the same to different places in their car Verna bearing no. PB46-AE-9783, colour white thereby are spoiling lives of general public. The FIRs under NDPS Act and other offences already stand registered against them. Today also, the above said Sajan Kalyan, Amarjit Singh @ Mithu, Navkaran Singh @ Nav and Manjit Singh @ Jojo while riding on the above said car Verna bearing No. PB46-AE-9783, colour white were coming from Village Nawan Pind, Mehta road, Amritsar towards Amritsar through Fatehgarh Shukarchak. If barricading is held at an appropriate place then they can be apprehended and recovery can be affected from them. As the above said information was cogent and reliable, hence, S.I Gulwinder Singh sent 'Ruqa' to the Police Station Verka, Amritsar for registration of an FIR under Section 411, 414 IPC, 21, 22, 25, 29 NDPS Act against the aforesaid accused persons, which resulted into registration of the aforesaid FIR No. 64/2022 (supra).

4. That thereafter S.I Gulwinder Singh along with other police officials held barricading at bridge Fatehgarh Shukarchak, Amritsar. During barricading, the aforesaid car Verna bearing no. PB46-AE-9783 came from Fatehgarh Shukarchak side, which was intercepted with the help of accompanying police officials by S.I Gulwinder Singh. The four occupants of the car were enquired about their identities. The driver of the car disclosed his identity as Sajan Kalyan @ Daddu S/o Jagdish Raj R/o Navin Abadi Faizpur Amritsar and other persons sitting in the car, disclosed their names-addresses as Navkaran Singh @ Nav Pandori S/o Davinder Singh R/o Village Pandori Warraich, Amritsar, Manjit Singh @ Manjeet @ Jojo S/o Sunny Ram R/o Khandwala, Sher Shah Suri road, Chheharta, Amritsar and above said Amarjit Singh @ Mithu.

5. That SI Gulwinder Singh made efforts to join independent witness in the police party before conducting personal search of the aforesaid persons and of their car, but no one consented to join the police party. Therefore, personal search of the above said persons namely Sajan Kalyan @ Daddu, Navkaran Singh @ Nav Pandori, Manjit Singh @ Manjit @ Jojo and Amarjit Singh @ Mithu respectively in presence of accompanying police officials by SI Gulwinder Singh, during which the following recoveries were made from their respective conscious possession:

Sr. No.	Name of the accused	Recovery effected
1.	Sajan Kalyan @ Daddu	One country made pistol, 8 live cartridges
2.	Navkaran Singh @ NavPandori	One country made pistol .32 bore, 7 live cartridges of KF 7.65
3.	Manjeet Singh @ Manjeet @ Jojo	One country made pistol with 5 live cartridges.
4.	Amarjit Singh @ Mithu	Two magazines of 32 bore with 5 live cartridges of 7.62 MM.

6. That it is submitted that the aforesaid accused persons namely Sajan Kalyan @Daddu, Navkaran Sigh @ Nav Pandori, Manjit Singh @ Manjit @ Jojo and Amarjit Singh @ Mithu could not produce any license or valid documents to keep possession of the above said arms and ammunition. Therefore, the same were seized and taken into police possession in accordance with law and all the above said accused persons were arrested in the case FIR No. 64/2022 (supra) accordingly.”

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 opposes bail and in support thereof, has referred to relevant paragraph(s) of the reply which reads as under:

“7. That it is submitted that during custodial interrogation, the above said accused Sajan Kalyan @ Daddu made disclosure statement before the Investigating Officer that someday ago he had sold heroin to one Rajbir Singh @ Raja S/o Tejpal Singh R/o Village Pandori Warraich, Amritsar. Therefore, the aforesaid Rajbir Singh @ Raja was also nominated as co-accused in this case.

8. That it is submitted that during the course of investigation of the aforesaid case FIR No. 64/2022 (supra), the above said accused Rajbir Singh Raja was arrested on 05.07.2022 and he made disclosure statement before the Investigating Officer that someday ago he had purchased 50 gm heroin from the above said Sajan Kalyan @ Daddu, out of which 25 gm heroin was sold to one Gursewak Singh @ Baba S/o Balwinder Singh R/o Village Balkalan, Amritsar, some was sold in retail and remaining heroin was kept concealed in a wooden almirah at his house. Therefore, Gursewak Singh was also nominated as co-accused in this case and on the basis of disclosure made by the above said accused Rajbir Singh, 22 gms of heroin was recovered from one wooden almirah at his residential house, which was taken into police possession.

9. That it is submitted that thereafter on the same day i.e. 05.07.2022, on the basis of disclosure made by the above said co-accused Rajbir Singh, the co- accused Gursewak Singh was arrested in this case, who suffered disclosure statement before the Investigating Officer that he had purchased 25 gm heroin from the above said Rajbir Singh @ Raja S/o Tejpal Singh Rio Village Pandori Warraich, Amritsar, out of which he had sold some heroin and remaining was kept concealed at his house. Therefore, on the basis of the identification made by the above said accused Gursweak Singh, 19 GM of heroin wrapped in one polythene envelope and drug money of Rs. 8500/- were recovered



from one room of his residential house, which were taken into police possession in accordance with law.

10. That it is submitted that all the above said accused persons namely Sajan Kalyan @ Daddu, Navkaran Singh @ Nav Pandori, Manjit Singh @ Manjit @ Jojo, Amarjit Singh @ Mithu, Rajbir Singh and Gursewak Singh were produced before the jurisdictional Ld. Court and their police remand was granted by the Ld. Court. Thereafter, the above said accused Sajan Kalyan @ Daddu made further disclosure statement before the Investigating Officer suffered disclosure statement before the Investigating Officer that Dharminder Singh @ Goli S/o Tarlochan Singh R/o Village Kazikot, District Tarn Taran and Prem Singh @ Kala Bhalwan @ Prema Bhalwan S/o Ishar Singh R/o Sandapura, PS Bhikhiwind, District Tarn Taran were also involved with him in drug peddling. Hence, Dharminder Singh @ Goli and Prem Singh @ Kala Bhalwan @ Prem Bhalwan were also nominated as co-accused in this case.

11. That it is submitted that all the above said accused persons namely SajanKalyan @ Daddu, Navkaran Singh @ Nav Pandori, Manjit Singh @ Manjit @ Jojo, petitioner Amarjit Singh @ Mithu, Rajbir Singh and Gursewak Singh were again produced before the jurisdictional Ld. Court and they were sent to judicial custody.

12. That it is submitted that during investigation the above mentioned accused Dharminder Singh @ Goli, who was already in judicial custody at Central Jail Patiala, was brought on production warrant on 07.07.2022. He was produced before the Ld. Court and was arrested in this case with the permission of the Ld. Court. The co-accused Dharminder Singh @ Goli disclosed during his custodial interrogation that he along with the aforesaid accused Sajan Kalyan @ Daddu was involved in drug peddling.

13. That it is submitted that during the course of investigation of the aforesaid case/FIR No. 64/2022 (supra), the ownership of the aforesaid car Hundai Verna bearing No. PB46-AE-9783, which was recovered from the accused SajanKalyan @Daddu, was verified, which was found in the name of Prem Singh @ Kala Bhalwan @ Prema Bhalwan S/o Ishar Singh R/o Sandapura, PS Bhikhiwind, District Tarn Taran.

14. That it is submitted that during the course of investigation of the aforesaid case FIR No. 64/2022 (supra), the aforesaid co-accused Prem Singh @ Kala Bhalwan @ Prema Bhalwan, who was already in judicial custody in case FIR No. 132, dated 17.07.2022, under Section 25 (6) (7) (8), Arms Act, Police Station Gate Hakima, Amritsar was brought on production warrant and was arrested in this case on 01.08.2022 with the permission of the learned Court, who disclosed during his custodial interrogation that he had purchased heroin twice from the accused Sajan Kalyan @ Daddu, but did not pay the money. Hence, the accused Sajan Kalyan @ Daddu had kept his above said car Verna No. PB46-AE-9783 with him, which was recovered from him. It was further disclosed vide his disclosure statement dated 02.08.2022 that the above said accused Sajan Kalyan @ Daddu was also selling heroin to the present petitioner Arshadeep Singh @ and Sajan Kalyan @ Daddu had given heroin and one illegal pistol to the present petitioner Arshadeep Singh @ Fauji and the present petitioner Arshadeep Singh @ Fauji was arrested with heroin and illegal pistol by the Police of Police Station Cantonment, Amritsar. Therefore, the present petitioner Arshadeep Singh @ Fauji was also nominated as co-accused in this case FIR No. 64/2022 (supra) on 02.08.2022.

15. That it is submitted that during the course of investigation of the case FIR No. 64/2022 (supra), the present petitioner Arshadeep Singh @, who was already in judicial custody, was brought on production warrant and he was arrested in this case FIR No. 64/2022 (supra) on 02.12.2022 with the permission of the learned Court. During



interrogation, the present petitioner Arshadeep Singh @ Fauji disclosed that the above mentioned accused Sajan Kalyan @ Daddu is his old known and the present petitioner Arshadeep Singh @ Fauji along with Sajan Kalyan @ Daddu was involved in drug peddling. The accused Sajan Kalayn @Daddy had brought him one illegal pistol from Bijnor, UP. The present petitioner Arshadeep Singh @ Fauji had procured heroin upon asking of Sajan Kalyan @ Daddu and had further delivered it to Sajan Kalyan @ Daddu on several occasions. The illegal pistol was recovered from the present petitioner Arshadeep Singh @ Fauji by the police of Police Station Cantonment, Amritsar and was sent to jail. The present petitioner Arshadeep Singh @ Fauji was again produced before the learned Court of competent jurisdiction and was sent to judicial custody.”

6. The initial disclosure statement refers to 50 grams of heroin. Later on, the police recovered 41 grams (22 grams + 19 grams) of heroin from two co-accused.

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

8. 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.

9. 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.

10. 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.



11. As per paragraph 4 of the bail petition, the petitioner has been in custody since 02.12.2022. 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 for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

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

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 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.

14. 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)	

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 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.

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, 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 restrain the accused from influencing the witnesses and repeating the offence.

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

19. 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.

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

(ANOOP CHITKARA)
JUDGE

30.07.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.