

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62051-2023 (O&M)
Reserved on: 10.01.2024
Pronounced on: 15.01.2024

Parkash Singh
... Petitioner(s)
Versus
State of Punjab
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present:- Mr. Arshdeep Singh Brar, Advocate
for the petitioner(s).
Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
135	20.7.2023	City South, Moga, District Moga.	21/22/29 NDPS Act

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 drug money relating to the sale of contraband seized in the FIR captioned above, having been recovered from him, has come up before this Court under Section 439 CrPC seeking bail.
2. In paragraph 20 of the bail petition, the accused declares that he has no criminal antecedents. However, as per the custody certificate, one more case under section 379 IPC is pending against the petitioner.
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. Given this, the rigours of Section 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. However, it remains undisputed that the quantity recovered from the main accused fell in commercial quantity.

6. Facts of the case are being extracted from reply dated 3.1.2024, which read as under:-

“3. That the present case bearing FIR No.135 Dated 20.07.2023 Police Station City South Moga was initially registered under section 21/22 NDPS Act against 3 accused namely (1) Kirandeep Kaur @Kirna wife of Gurpreet Singh, (2) Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and (3) Baljit Singh @ Mintu son of Kuldeep Singh on the basis of secret information. Brief facts of the case are that on 20.07.2023 a police party headed by ASI Tarsem Singh of CIA Staff, Moga was present at Bahona Chown, Moga in connection with patrolling and checking of suspected persons then special informer came there and informed that (1) Kirandeep Kaur @ Kirna wife of Gurpreet Singh, (2) Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and (3) Baljit Singh @Mintu son of Kuldeep Singh used to sell the intoxicant tablets and heroin, and in case, raid is conducted then they can be apprehended red handed and from their possession huge quantity of heroin and intoxicant tablets can be recovered. On the basis of said information, ASI Tarsem Singh sent ruqa to the police station and got registered the present case. On receiving the information, another police party headed by ASI Sukhwinder Singh reached at the spot and apprehended said Kirandeep Kaur @ Kirna wife of Gurpreet Singh and Jasvir Kaur @Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldeep Singh and **recovered 5 grams of heroin and 130 Etizolam tablets from their possession.**

4. That during investigation of the case, said Kirandeep Kaur @ Kirna wife of Gurpreet Singh and Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldeep Singh, got recorded their disclosure statement that they had purchased said 130 intoxicant tablets and 5 grams heroin from Karamjit Singh @ Sahil son of Kulvir Singh, Sona wife of Pawan Kumar, Kallu residents of Sadhan Wali, Jashandeep Singh @ Kali son of Raja Singh, Amarjit Singh resident of Chowk Shekhan, Moga as per directions of Parkash Singh (Petitioner) son of Harbhajan Singh resident of Shri Guru Chander Nagar, Moga. On the basis of said disclosure statement said Karamjit Singh @ Sahil son of Kulvir Singh, Sona wife of Pawan Kumar, Kallu residents of Sadhan Wali, Jashandeep Singh @ Kali son of Raja Singh, Amarjit Singh resident of Chowk Shekhan, Moga and Parkash Singh were nominated as accused and offence u/s 29 of NDPS Act was added vide DDR No.31 Dated 21.07.2023. Copy of disclosure statement is attached herewith as Annexure R-1/T.

5. That during investigation of the case, petitioner Parkash Singh was arrested by the police on 21.07.2023 and from his possession, drug money amounting to Rs.20,000/- was recovered.”

7. Petitioner’s counsel seeks bail on the ground of parity with co-accused who have

been granted bail by this Court vide order dated 13.12.2023 passed in CRM-M-59294-2023 **Manpreet Singh Vs. State of Punjab** and vide order dated 20.12.2023 passed in CRM-M-63250-2023 **Karamjit Singh @ Sahil Vs. State of Punjab**. He submits that the petitioner is in custody for 5 months and 21 days and there is no evidence against the petitioner except the disclosure statement of co-accused against him. There is no evidence whatsoever that the drug money was recovered from him, however, the amount of Rs.20,000/- was hard earned money of petitioner.

8. State opposes the bail and submits that the petitioner has criminal history, as he is involved in one more case under Section 379 IPC. He also referred to paragraph 6 of the reply, which reads as under:-

“6. ROLE OF PETITIONER:

That the petitioner has been nominated as accused in the instant case on the basis of disclosure statement of co-accused who were apprehended red-handed on the spot with 130 intoxicant tablets containing ETIZOLAM and 5 grams of HEROIN. Role attributed to the petitioner is that it is the petitioner on whose directions, the above mentioned contraband i.e. 130 intoxicant tablets containing Etizolam and 5 grams of Heroin was procured by the co-accused (caught on the spot) from Karamjit Singh @ Sahil, Sona, Kallu, Jashandeep Singh @ Kali and Amarjit Singh. Thus, the petitioner has participated actively and has played a pivotal role in the occurrence involving commercial quantity of the contraband Etizolam, therefore, bar of section 37 NDPS will be applicable in the instant case.”

REASONING:

9. As far as criminal history is concerned, the offence in that case is altogether different from the present case and this Court is not willing to decline bail only on the ground of an unrelated criminal history.

10. An analysis of the pleadings, arguments addressed by the parties would lead to the outcome to the effect (i) that the police had recovered 130 tablets of etizolam in the matter, which fall in commercial quantity; (ii) that based on the disclosure statement of the co-accused the police has arrested the petitioner on 21.7.2023 and from his possession recovered an amount of Rs.20,000/-, which the investigator termed as drug money; (iii) that there is no evidence to *prima facie* point out that the money which was recovered was proceeds of sale of drugs; (iv) that the allegation of petitioner participating actively and playing pivotal role is based on the disclosure statement; and (v) that the other evidence is sketchy. Furthermore, this Court had already granted anticipatory bail co-accused Manpreet Singh vide order dated 13.12.2023 passed in CRM-M-59294-2023 **Manpreet Singh Vs. State of Punjab**, whose case is identical and similar to the petitioner. Thus, there is no reason to take a different view and

consequently, the petitioner makes a case for bail.

11. For the time being, the petitioner, who is already incarcerated since 21.7.2023 has *prima facie* satisfied the first condition of section 37 of the NDPS Act to make out a case for bail. Regarding the second rider of Section 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offence.

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. 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.

14. 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. 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.

15. 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 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 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)	

16. 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.

17. 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. 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.

18. The petitioner is directed not to keep more than one prepaid SIM, i.e., one prepaid 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."

19. 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.

20. 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.

21. 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]**,

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."

22. 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.

23. 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 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.

24. 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.

25. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

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

January 15, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes