

CRM-M-62810-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62810-2023
Reserved on: 06.08.2024
Pronounced on: 30.08.2024

Gurjit Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ankur Jain, Advocate and
Mr. Rajiv Kumar Saini, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
159	20.07.2023	Ranjeet Avenue, Amritsar	21/27/25/29 of NDPS Act and 25/27 of Arms Act 1959

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. As per para 15 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	54	2016	363, 364, 365, 341 IPC	Ajnala, Amritsar Rural
2	11	29.09.2016	307, 148, 149 IPC and 25 of Arms Act	SSOC, Amritsar
3	84	19.05.2017	307, 363, 364, 365, 366, 379-B, 506, 379-B, 120B, 34 IPC and 25 of Arms Act	Ajnala, Amritsar Rural
4	22	15.09.2017	364, 382, 386, 387, 212, 216A, 414, 416, 120B IPC and 21/25/29 of NDPS Act	SSOC, Amritsar
5	14	10.06.2018	420, 364A, 382, 386, 387, 212, 216, 216A, 120B IPC and 42/52 of Prisons Act	SSOC, Amritsar
6	46	25.02.2020	21 of NDPS Act	Chabhal, Tarn Taran
7	26	18.04.2023	307, 506, 34, 148, 149 IPC and 25/27 of Arms Act	Jhander, Amritsar Rural

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3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“8. That during the course of investigation of the aforesaid case FIR No. 159/2023 (supra), the co-accused Tejbir Singh suffered disclosure statement before the Investigating Officer that he had supplied one illegal pistol .30bore to the present petitioner Gurjit Singh Sainsara S/o Kewal Singh which was given to him (petitioner) by Abhiraj Singh @ Abhi S/o Gurdeep Singh. Therefore, the present petitioner Gurjit Singh Sainsara and Abhiraj Singh @ Abhi were also nominated as co-accused.

9. That it is submitted that during the course of investigation, the present petitioner Gurjit Singh Sainsara S/o Kewal Singh was arrested on 24.7.2023 and one illegal pistol 30 bore loaded with 4 live cartridges of .30 bore was recovered from the present petitioner Gurjit Singh Sainsara S/o Kewal Singh, which were taken into police possession in accordance with law and offence under Section 25 Arms Act was added in this case.”

4. The petitioner's counsel submits that a secret information was received qua three persons i.e. Manpreet Singh @ Manu, Balwinder Singh @ Dhoni and Gurjit Singh s/o Rajinder Singh. Counsel further submitted that 100 grams of heroin on 20.07.2023 and 80 grams on 24.07.2023, was recovered from co-accused Gurjit Singh s/o Rajinder Singh. It is also submitted that a .30 Bore pistol and 4 live cartridges were recovered from the petitioner but no contraband was recovered from him. Petitioner was also granted interim bail in the present case and he surrendered back on 16.11.2023.

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 reply.

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

“16. That it is submitted that the present petitioner Gurjit Singh S/o Kewal Singh and co-accused Tejbir Singh were released on interim bail subject to receipt of report of FSL. Thereafter upon presentation of challan on 21.09.2023, the learned trial Court had issued summons to the present petitioner Gurjit Singh and co-accused Tejbir Singh for their appearance on 3.10.2023. Pursuant thereto, the co-accused Tejbir Singh appeared before the learned trial Court on 3.10.2023 and he was sent to judicial custody. Whereas, the present petitioner Gurjit Singh Sainsara S/o Kewal Singh did not appear before the learned trial Court. Hence, his interim bail was cancelled and non-bailable warrant of arrest was issued against him by the learned trial Court. Therefore, efforts were made to arrest the present petitioner Gurjit Singh Sainsara S/o Kewal Singh and the present petitioner No Gurjit Singh Sainsara was arrested.”

8. The quantity involved is less than commercial, and there is no substantive

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evidence that the money is connected to drug sales proceeds. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case. The evidence is based on disclosure statement of the co-accused. As per the synopsis given by the petitioner’s counsel, petitioner was arrested on 16.11.2023. Given the quality of evidence, the 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 of further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

9. 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.

10. 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.

11. 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)	

12. This order is subject to the petitioner’s complying with the following terms.
13. 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.
14. 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.

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15. 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.

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

17. 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.

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

(ANOOP CHITKARA)
JUDGE

30.08.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.