

2025 PHHC 006360



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-540-2025
DATE OF DECISION: 16.01.2025

JONI SINGH ALIAS JOHNEY SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amardeep Singh, Advocate
for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1.) RELIEF SOUGHT

This petition has been filed under Section 483 of BNSS 2023 for grant of regular bail to the petitioner in case FIR No.44 dated 21.06.2024 (Annexure.P-2) under Section 21-C of NDPS Act, 1985 (Section 29, 27-A of NDPS added Later) registered at Police Station Sarai Amanat Khan, District Tarn Taran, Punjab.

The FIR is reproduced below :-

‘SHO Police Station, Jai Hind, Today I ASI including ASI Karam Singh 631/TT:, ASI Gajjan Singh 1674/T:T:, ASI Kuldeep Singh No. 1037/T:T:, PHG Baldev Singh 4869 were patrolling in a private vehicle in search of bad elements along with a laptop, printer, stationery, torch and were going from the Police Station towards Lohiya, Chahal, Naushera Dhala, etc. When the Police Party reached Link Road Lohiya then, from the side of Link

Road Village Lohiya two persons were seen coming on a motorcycle towards Adda Sarai Amanat Khan. On seeing the police party those persons suddenly panicked and tried to turn back their motorcycle but they fell on the ground. Based on suspicion, I ASI along with fellow employees came forward and apprehended the driver of the motorcycle who was lying down and asked about his whereabouts, he disclosed his name as Jobanpreet Singh Joban son of Surjeet Sirigh son of Pal Singh resident of Dhala Naushers and his fellow who ran towards the fields was chased by 1 ASI along with fellow otüicals and during the chase, we saw under the beam of the torch that the said person had thrown plastic polythene on the ground. He was apprehended and upon asking he disclosed his name as Dilpreet Singh Dil son of Late Jagtar Singh son of Arjan Singh resident of Chahal. He was taken towards his thrown plastic polythene and asked about its contents. He handed over the said polythene to 1 ASI and told me that it contained heroin. Further, he said that they were trying to find a customer to sell this but were apprehended. Then before opening the plastic polythene, an effort was made to join the public witness but due to late night, no one was found for same. On which I ASI opened the said polythene and found heroin in it. On weighing the same on an electronic weighing machine, it came to 375 grama in weight. A parcel was prepared after putting the recovered heroin in a plastic box and sealed by 1 ASI with my seal SP. A sample was also prepared and stamped by I ASI and recovered heroin of 375 grams was taken into police custody as evidence, I ASI handed over my stamp to ASI Gajjan Singh 1674/T.Ta., after use. The recovered motorcycle mark Hero Honda colour Black without Number Plate was taken into custody vide separate fard. That accused Jobanpreet Singh Joban and Dilpreet Singh Dil had committed the offense under section 31-C/61/85 of NDPS Act by keeping 375 grams of Heroin. Therefore a ruga was prepared on a laptop against both the persons under said offense and its printout is sent to the police station through PHG Baldev Singh

4869 for registration of FIR A number should be allotted, after registering the case. Special Reports should be issued and sent to the Illaga magistrate and officials. Control Room should be informed. Section 50 of the NDPS Act could not be complied with due to chance recovery. 1 AST along with fellow officials are busy at the spot. Sd/- Satpal 1785 Police Sarai Amanat Khan Date 20.06.2024 Today at Link Road Lohiyan Sarai Amanat Khan Time: 11:55 PM."

2.) Contentions

On behalf of the petitioner

The learned counsel for the petitioner asserts that the petitioner has been wrongfully implicated in the present case, claiming that the alleged recovery of 22 grams of heroin was fabricated. It is emphasized that the original FIR was registered against Jobanpreet and Dilpreet Singh, with the petitioner being named solely based on the statement of a co-accused, from whom the purported contraband was allegedly seized weighing to 315 grams of heroin.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He submits that the alleged contraband i.e 22 grams has been recovered in the present case. The quantity alleged to have been recovered though falls under the non-commercial quantity, however submits that from other co-accused contraband recovered is commercial in nature and the same was being transported from Pakistan via drone. Thus, the petitioner is not entitled to be released on regular bail.

3.) Analysis

In everyday terms, the principle of law dictates that bail is the general rule, while jail is the exception. However, this Court acknowledges that the power to grant or deny bail is extraordinary and must be exercised with caution. It is well-established that when considering a bail application (whether pre-arrest or regular bail), the Court must form a prima facie opinion as to whether reasonable grounds exist to support the accusation, or if the accusation is frivolous and baseless possibly made with the intention of harming or humiliating the individual, or falsely implicating them in the crime. This evaluation must be conducted in the light of self-imposed restrictions and the broader legal parameters outlined.

This Court is mindful that, according to the legal mandate rendered by Hon'ble Supreme Court in Criminal Appeal No. 3840 of 2023, titled "***Saumya Churasia versus Directorate of Enforcement, decided on 14.12.2023***", when considering a bail application, the Court is not obligated to meticulously examine the evidence gathered by the Investigating Agency. However, the Court must consider several factors, including the nature of the accusation, the type of evidence collected in support, the severity of the punishment for the alleged offences, the character of the accused, the unique circumstances surrounding the accused, the likelihood of securing the accused's presence during trial, the possibility of witness tampering, and the broader interests of the public or State. In the light of these factors, when assessing a bail application, the Court is required to form a prima facie opinion based on these broad guidelines, without delving into the

merits of the evidence, as doing so could potentially prejudice the rights of both the accused and the prosecution.

To evaluate the bail application under the NDPS Act, this Court finds it necessary to revisit the Preamble of the Act, which in essence states that An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.

While addressing the objectives of the NDPS Act, the Hon'ble Supreme Court in the case of *“Durand Didier v Chief Secretary, Union Territory Of Goa (1990) 1 SCC 95”* emphasized that the rampant issue of clandestine smuggling and illegal trafficking of drugs and substances has led to widespread drug addiction, particularly among adolescents and youth. This has had a harmful and devastating impact on society. With grave concern, it was noted that the organized activities of criminal groups and the illegal importation of narcotic drugs and psychotropic substances into the country have caused a significant increase in drug addiction, especially among young people and students, affecting both genders. The menace has grown to alarming proportions in recent years. Consequently, to effectively combat and eliminate this growing threat, which is causing severe and harmful effects on society as a whole, Parliament, in its wisdom,

enacted the NDPS Act of 1985, introducing provisions that mandate minimum imprisonment and fines for such offences.

The tactics employed by drug peddlers engaging in the narcotics trade often involve starting with small or intermediate quantities, banking on the assumption that, even if apprehended, they will be granted bail. This, however, cannot be the intended purpose of the law. Such individuals, involved in trafficking even modest amounts of contraband, are akin to termites eroding the fabric of society. It is imperative that, when considering bail applications from those engaged in the trafficking of small or intermediate quantities, the Court takes a firm and resolute stance, addressing them with the utmost severity to curb this insidious menace..

Merely because the quantity involved is categorized as "Intermediate Quantity" does not, by itself, bestow an automatic right to bail. Granting bail to those accused of trafficking or peddling highly dangerous substances such as Heroin/Chitta would essentially offer *carte blanche* for illegal activities. Such a decision would embolden these individuals to persist in their illicit trade, operating under the misguided belief that even if apprehended, they could be swiftly released on bail. It is imperative that such conduct and the false sense of impunity it fosters, be dealt with decisively, as they pose a profound threat to the very fabric of our society and nation. The modus operandi of the masterminds behind the illegal trafficking whether dealing in small or intermediate quantities must be met with unwavering severity. The legislative intent and the rule of law must be rigorously enforced,

and cannot be allowed to be undermined, irrespective of the quantity in question.

In the esteemed view of this Court, even if the stringent provisions of Section 37 of the NDPS Act do not apply, the petitioner cannot be granted an advantage or permission to seek bail, especially when 22 grams of Heroin/Chitta (the contraband in question) was recovered from him. Granting bail at this stage could inadvertently signal a tacit approval or encouragement of such illegal activities.

The Himachal Pradesh High Court has, in recent times, ruled on the case of ***Surinder Kumar vs. State of Himachal Pradesh bearing no. Cr.MP(M) No.489 of 2024***, which reads as under:-

9. The learned counsel for the petitioner submits that in the instant case, once the bail petitioner is involved in contraband relating to intermediate quantity of Heroin/Chitta [5.65 grams], therefore, the petitioner has claim for bail as of a right. In considered view of this Court, the plea is without any substance for the reason that merely because intermediate quantity of Heroin/Chitta is involved, the same cannot confer any right for anticipatory bail. In facts of this case, the alleged contraband was recovered from the bail petitioner. Permitting enlargement on bail shall certainly amount to granting leverage or licence to the petitioner and others, who indulged in nefarious activities with the hope and belief that they will be enlarged on bail by the Court(s). The dangerousity and killing instinct of Heroin/Chitta (as involved in this case) also restrains the Courts from exercising its discretion in favour of the bail petitioner, from where Heroin/Chitta (5.65 grams) was recovered. Even a

pinch of touch out of one gram of Heroin (Chitta) is sufficient enough to make a person initially addict, without which the person becomes repulsive. Such addiction for them leads to peddling for own sustenance and for easy trading. It is high time that the rule of law needs to be strictly enforced and the societal interests are safeguarded and protected; lest tomorrow one and all may face repentance, repentance and repentance only and nothing more. In the interests of society and to enforce rule of law as discussed hereinabove and once the alleged contraband (5.65 grams) has been recovered from the bail petitioner, the prayer for enlargement on bail is without merit at this stage.

CONCLUSION

Turning to the merits of the case in hand, where 22 grams of heroin have been seized from the petitioner, the method of trafficking evidenced by the contraband being smuggled from Pakistan via drone highlights the sophisticated network facilitating such illegal trade, which demands a resolute and uncompromising response. Furthermore, the petitioner's criminal history, marked by involvement in one another similar case, raises serious concerns about the likelihood of reoffending. There is a distinct possibility that, if granted bail, the petitioner will once again partake in this unlawful enterprise. In addition the custody suffered by the petitioner is only 6 months and 20 days to grant bail at this stage would, in effect, subtly convey a tacit endorsement or unintentional encouragement of such nefarious activities.

DECISION

In the light of above, dictums and discussions made and the modus operandi of the kingpins engaged in illicit activities, whether trafficking in small or intermediate quantities, must be met with unwavering resolve and stringent action. The intent of the legislature and the sanctity of the rule of law must be upheld at all costs, and cannot be allowed to be undermined, regardless of the quantity involved.

Hence, the same stands dismissed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

16.01.2025
Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>