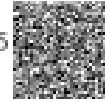


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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8906-2025
DECIDED ON: 21.02.2025

ABHAY GAUTAM

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Arjun Sood, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-6591-2025

Application is allowed, as prayed for.

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, has been invoked for grant of regular bail to the petitioner in case FIR No. 249, dated 27.09.2023, under Sections 18, 25, 29 of NDPS Act, 1985, registered at Police Station Sahnewal, Ludhiana.

2. Facts

The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“Statement of Jagdish Rai 1003/LDH, Crime Branch-3, Ludhiana aged around 53 years, M.No.97792-90003. Stated that I am posted as Investigating Officer at Crime Branch-3, Ludhiana. Today I alongwith you and ASI Bhupinder Singh 1233/LDH, ASI Surinder Pal 727/Ldh and Senior Constablenderjit Singh 1743/LDK alongwith government vehicle Bolero No.PB-10-FV-0520, whose driver is ASI Binder Singh 1473/Ldh, was present at Near Gurdwara Sahib Area P.S. Sahnewal, iudhiana, on the side coming from Delhi to Ludhiana regarding patrolling and checking of bad elements that at around 09.45 pm, secret informer informed me on whatsapp at my Mobile No.97792-90003 that AbhayGautam s/o Ram Avtar r/o Village Sultanpur P.S. Jalalabad, Distt. Shahjahanpur, UP presently tenant at H.No.18, GaliNo.01; Near Natha da Khuh, MohallaMahinder Nagar, Giyaspura, P.S.Daba, Ludhiana, having cut hair from head, who would be around 26 years of age, against whom there are other FIRs registered in different police stations of Punjab regarding the smuggling of opium and Ram Murti s/o Lakhan Kumar r/o Village NawaGaon, P.S. Jalalabad, Distt, Shahjahanpur, UP presently R/o H. No.18, Gali No.01, Near Natha Da Khuh,MohallaMahinder Nagar, Gyaspura, P.S.Daba, Ludhiana having cut hair from head, who would be around 53 years of age, who are doing the illegal business of selling opium since a long time in connivance with each other, who has kept a car no.PB-91-L-8651, S PressoMaruti Suzuki white coloured for the supply of opium to their customers and AbhayGautam and Ram Murti who bring the opium from Rai Barely U.P. and supply the same to their customers in Punjab. That today also AbhayGautam and Ram Murti above are coming from Khanna side towards Ludhiana side to Ludhiana city, in order to supply the opium to their customers after hiding the opium in their above car no.PB-91-L-8651, S Presso, Maruti Suzuki white coloured. The information given by my secret informer is accurate and reliable. If barricading/nakais laid here and checking is

conducted then Abhay Gautam and Ram Murti above can be apprehended with huge quantity of opium alongwith abovesaid car. In this regard, I prepared the report u/s 42 NDPS Act at the spot which will be sent to the officers. Regarding the information given by the secret informer about selling opium by AbhayGautam and Ram Murti above, I have informed you verbally. As per the information received from my secret informer, I have got recorded my above statement to you. Statement has been read, is correct. Legal action be taken against the abovesaid Accused. Statement of ASI JagdishRai No.1003/LDH attested ASI Jaswinder Singh 1550/LDH Crime Branch-3 Commissionerate Ludhiana dated 27.9.23. Police action: Today I, ASt alongwith ASI JagdishRai 1003/LDH, ASI Bhupinder Singh 1233/LDH, ASI Surinder Pal 727/Ldh and Senior Constable Inderjit Singh 1743/LDH alongwith government vehicle Bolero no.PB-10-FV-0520, whose driver is ASI Binder Singh 1473/Ldh, present at Near Gurdwara Sahib Area PS Sahnewal, Ludhiana, on the side coming from Delhi to Ludhiana regarding patrolling and checking of bad elements, I am having private laptop and printer with me then ASI JagdishRai 1003/LDH was called by secret informer at his mobile no.97792-90003 on whatsapp and informed about the opium by the accused AbhayGautam and Ram Murti above, who prepared report u/s 42 NDPS Act and ASI JagdishRai 1003/LDH firstly informed me about the same orally and then as per the information given by his secret informer, he got recorded his abovesaid statement before me which was read to him who after hearing and reading his statement, put his signatures in Punjabi under his statements which was verified by me. From the above statement, prima facie offence u/s 18, 25, 29-61-85 NDPS Act is made out. After taking the print out of above statement, the same is being sent to the police station Sahnewal by hand through ASI Surinder Pal 727/LDH for registration of FIR against accused AbhayGautam s/o Ram Avtar r/o Village Sultanpur PS Jalalabad, Distt.Shahjahanpur, UP presently tenant at H. No.18,

GaliNo.01, Near Natha da Khuh, MohallaMahinder Nagar, Giyaspura, PS Daba, Ludhiana and Ram Murti s/o Lakhan Kumar r/o Village NawaGaon, PS Jalalabad, Distt. Shahjahanpur, UP presently r/o H. No.18, GaliNo.01, Near Natha Da Khuh, MohallaMahinder Nagar, Gyaspura, PS Daba. After registration of FIR, number be intimated. Special reports be issued and control room be informed. ASI JagdishRai 1003/LDH relieved from the spot after giving necessary instructions. I ASI alongwith colleagues busy in investigation at the spot. In the area of: Near GurdwaraAtarsar Sahib, Area PS Sahnewal Ludhiana at 10.45 pm.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the contraband involved in the instant FIR is marginally over and above the commercial quantity i.e. 2 kg and 600 grams of Opium whereas no alleged recovery was effected from the conscious possession of the petitioner. He further contends that he has been falsely implicated in the instant FIR on the concocted story of the police authorities without complying with Section 52-A(2) of NDPS Act.

On behalf of the respondent/State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that huge quantity of contraband i.e., 2 kg 600 grams of opium has been recovered in the present case, therefore, rigour of Section 37 of NDPS would be attracted. Additionally he submits that the petitioner is a habitual offender, as he is involved in other cases of similar nature.

4. 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 light of the self-imposed restrictions and the broader legal parameters outlined.

This court at this juncture would first delve into the provision of Section 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, wherein it specifically provides that, individuals can be prosecuted if they are found to be buyers or sellers of contraband, especially in the context of conspiracy or abetment related to drug offences. This section specifically addresses the penalties for those who assist or participate in a criminal conspiracy to commit an offence under the NDPS Act. It emphasizes that "*whoever abets, or is a party to a criminal conspiracy to commit an offence*" is subject to punishment under this law. Buyers or sellers though may not be found in conscious possession can be implicated under this section if there is adequate evidence demonstrating their involvement in a conspiracy related to drug trafficking.

An additional aspect that must be considered by this court is the frequent practice where individuals are implicated under Section 29 of the NDPS Act assert that they were neither present at the scene nor had any contraband in their conscious possession. Taking advantage of this defense, many such accused persons are granted bail. However, this practice needs to be addressed, as individuals targeted under Section 29 are often the primary

masterminds behind the drug trafficking networks, orchestrating operations from a distance while using others, typically those found in direct possession of the drugs, as scapegoats. Consequently, the court is of the firm opinion that in such cases, these individuals should be held equally accountable and should not be afforded any leniency.

Furthermore, the drug is a social malady, while drug addiction eats into the vitals of the society whereas drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. The devastating effects of narcotic drugs on any person who comes to its touch are too well known. Normally, such a person ceases to be a normal human being, and is more or less reduced to zombie living animal existences and rushing fast to meet the maker. Divine qualities of an individual who consumes narcotic drugs disappear and they are the first sacrifices one normally makes while falling prey to use of drugs. Anxiety of legislature is to prevent the adverse affect of such drugs and substances on the society.

In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence

punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

Adverting to the merits of the present case, wherein 2 kg 600 gms opium, stands recovered, though not from the conscious possession of the petitioner, but from the Car, in which the petitioner was travelling. Moreover, the quantity recovered is commercial in nature, therefore the rigours of Section 37 of NDPS would attract in this case and therefore, it would not be just for the Court to let the petitioner out added with the fact that petitioner is a habitual offender, as he is involved in two other cases of similar nature, which is sufficient for this Court to infer that the petitioner is indulged in business of selling Narcotic Substances.

Based on the aforementioned facts, the court can reasonably conclude that the petitioner is involved in a criminal conspiracy aimed at facilitating the commission of an offense. Upon perusal of FIR, it is clear that the petitioner, is engaged in the illegal drug trade, contributing to the addiction

of young boys. As a result, these young individuals are resorting to theft and other criminal activities to satisfy their drug cravings. This highlights the state government's failure to address the growing drug problem, which is particularly alarming in Punjab. The widespread drug abuse is severely undermining the future of the country, as it is gradually eroding the youth population, much like a termite.

In light of these concerns, the court, as the guardian of its citizens, deems it essential to take decisive action against such offenders, especially when the lives and futures of the nation's youth are at stake. The drug epidemic must be tackled with the utmost seriousness. The illegal activities carried out by the individuals involved must be met with resolute measures. The intent of the legislature and the integrity of the rule of law must be preserved at all costs, and cannot be allowed to be undermined, irrespective of the quantity of drugs involved.

5. **DECISION:-**

Keeping in view the afore-said facts and circumstances and nature of averments, the petitioner does not deserve the concession of regular bail.

Hence, the present petition is hereby, dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

21.02.2025

Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No