

2025:PHHC:031420



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8830-2025
DECIDED ON: 21.02.2025

PAWANDEEP SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Sukhpreet Kaur Grewal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, has been invoked for the 2nd time for grant of regular bail to the petitioner in case FIR No. 120, dated 22.07.2024, under Section 21(c) of NDPS Act, 1985 (Sections 25, 27-A, 29, 61, 85 of the NDPS Act added later on), registered at Police Station Chheharta, District Amritsar.

2. Facts

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

“To: The SHO, Police Station Cheharta, Amritsar, Jai Hind, Today, I, SI along with ASI Ravinder Singh (2748), ASI Hira Singh (227), and HC Ranjodh Singh (2330) were patrolling in a private vehicle in connection with

the search for suspicious persons, and were returning to the police station via Kale Pind. Upon reaching near Nakha Wala Bagh at the Kapathgarh Bypass a turn Chheharta, the police party saw suspicious individual (Mulla Fashion) standing on the road near Nakha Wala Bagh, who was holding a black polythene bag in his right hand. Upon noticing the police party, he began to walk away hurriedly. Suspecting his behavior, I, SI stopped and apprehended him. Upon questioning, the individual identified himself as Sukhdev Singh alias Manga son of Surjit Singh resident of village Kotli Dasaunda, Police Station BhindianSaidan, District Amritsar. Whom I, SI introduced myself and informed the individual of my designation that my name is SI Jagga Singh and I am posted as Assistant Station Officer at Police Station Chheharta. I am wearing my uniform which bears my name plate. I am having suspicion that the black polythene hand contains in your bag narcotic/intoxicating substances for which your search is required to be conducted. You have the legal right to have your search conducted in the presence of a Magistrate or a Gazetted Officer, for which. I can arrange on the spot. On this, accused Sukhdev Singh alias Manga, stated verbally to myself sI that, he wished to have his search conducted in the presence of a Gazetted Officer. Consequently, I, SI, called Sh. Sukhpal Singh, PPS, Assistant Commissioner of Police, West Amritsar, on his phone number 79867-43829 from my phone number 97797-01498 and apprised him of the situation, requesting his presence at the spot.. In compliance with Section 50 of the NDPS Act, Sh. Sukhpal Singh, PPS, Assistant Commissioner of Police, West Amritsar, arrived at the location after some time, accompanied by his gunman in government vehicle number PB02-CR-2696. After being briefed about the circumstances, Sh. Sukhpal Singh, PPS, introduced himself, his rank, and his posting to the apprehended accused Sukhdev Singh alias Manga son. of Surjit Singh, resident of village Kotli Dasaunda, Police Station BhindianSaidan, District Amritsar. He stated, "I am Sukhpal Singh, PPS, posted as Assistant Commissioner of Police, West Amritsar. I am a Gazetted Officer appointed by the Punjab Government, and I have been informed that you may be in possession of some narcotic substance. Therefore, a search of the black polythene bag in your right hand is required to be conducted. However, you have the legal right to have your search conducted in the presence of a Magistrate or another Gazetted Officer, for which can arrange on the spot. At this, the individual, Sukhdev Singh alias Manga, verbally responded, "I have complete trust in your good self, and you may conduct my search." Following this, Sh. Sukhpal Singh, ACP West Amritsar, complied with the requirements of Section 50 of the NDPS Act. Before, conducting the search of the black polythene bag held in the right

hand of the accused, the ACP Sahib attempted to join public witnesses in the police party as a precaution. However, no person from the public agreed to join, fearing enmity. As per the directions of ACP Sahib, I, SI, in the presence of fellow staff members, conducted the search of the black polythene bag held in the right hand of the accused Sukhdev Singh alias Manga, following the prescribed procedure. Upon opening and checking the black plastic envelope, the substance found inside was tested using a Ketamine Detective Kit and was confirmed to be heroin. The recovered heroin, including the black polythene bag, was weighed using an electronic scale and was found to be 567 grams. The recovered heroin, along with the polythene, was placed into a separate plastic box, prepared as a case property parcel. ACP Sahib affixed his seal marked "SS" on the parcel, and I, SI, affixed my seal marked "JS" on the same. A sample seal was prepared separately. After sealing, I handed over the seal to ASI Ravinder Singh 2748, while ACP Sahib retained his seal with himself. I, SI, took the plastic box parcel containing 567 grams of heroin, sealed with seals impressions "SS+JS," along with the sample seal, into police custody as evidence via recovery memo. As per the directions of ACP Sahib, I conducted a personal search of the accused Sukhdev Singh alias Manga, and no cash or other incriminating items were found on him. Accused Sukhdev Singh alias Manga, by keeping 567 grams of heroin in his possession, has committed an offense punishable under Sections 21 (C) and 61-85 of the NDPS Act. The search and seizure were video recorded using the E-Sakshya app. The present Rug is being sent to the police station by hand through HC Ranjodh Singh 2330 regarding registration of an FIR. After registration of FIR, its number be got informed. Special reports will be issued and sent to the service of Area Magistrate and senior officers. Information has also been provided to the Control Room. I, SI, along with the accompanying staff, remained engaged at the spot for further investigation. Location: Near Nakhan Wala Bagh, Kapurthala Bypass, Chheharta, Amritsar Time: 07:50 PM. Signed/- Jagga Singh, • SI, Police Station Chheharta, Amritsar Date: 22.07.2024 At the Police Station: Upon receiving the aforementioned Ruga at the police station, the above said FIR. under the above said sections was registered and duly entered in the register. The original ruga, along with a copy of the FIR, is being sent to the assigned SI at the spot by hand through HC who brought ruga at police station. Special reports regarding the present case are being issued and dispatched by - HC Harmandeep Singh 2129/ASR to the Area Magistrate and senior officers. Information has been conveyed to the Control Room and the SHO of the concerned police station via telephone. Completion report no. 58 was completed at 08:49 PM. ”

3. Contentions**On behalf of the petitioner**

Learned counsel for the petitioner submits that initially the petitioner was not named in the FIR, but subsequent was nominated on the basis of disclosure statement suffered by co-accused Sukhdev Singh. He further submits that no recovery whatsoever is to be effected from the petitioner. He contends that the antecedents of the petitioner are clean, as he is not involved in any other case.

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 567 grams of heroin has been recovered in the present case, therefore, rigour of Section 37 of NDPS would be attracted.

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 567 grams of heroin stands recovered, though not from the possession of the petitioner, but from the co-accused Sukhdev Singh, who disclosed the name of the petitioner stating that he used to hand over the money earned by selling heroin to the petitioner on the directions of Pakistani smugglers. 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 drug money to the tune of Rs.12,30,000/- was recovered from the petitioner and co-accused Dilpreet Singh, which is sufficient for this Court to infer that the petitioner has actively indulged himself 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

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