



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14842-2025
DECIDED ON: 08.04.2025

HARJIT SINGH ALIAS MINTUPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Arora, Advocate for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the third time under Section 439 of the Code of Criminal Procedure for the grant of Regular Bail to the Petitioner in FIR No. 67, dated 06.04.2020, under Sections 22/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and Section 188 of I.P.C. (Section 29 of NDPS Act, 1985 added subsequently) registered at Police Station Tanda, District Hoshiarpur.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

"Officer In-charge, Police Station Tanda Jai Hind, today ASI Jaspal Singh 1348 along with Ct. Puneet Kumar 768/HSP, Ct. Gagandeep Singh 1406/HSP and PHG Gurdeep Singh 25939 were patrolling on a government vehicle with registration number PB-07-BG-1270 in connection with checking and search of bad elements and curfew imposed after outbreak of Covid 19, the driver of the vehicle was Ct. Gaurav Rana

1616/HSP and when they were present at adda Jhansa, a secret informer gave information to them that Harpreet Singh alias Happy son of Satnam Singh, resident of Khakha, P.S. Tanda, Varinder Singh alias Bindri son of Karnail Singh, resident of Bassi Jalal, P.S. Tanda and Harjit Singh alias Mintu son of Baldev Singh, resident of Baicha, PS Tanda, District Hoshiarpur are consuming intoxicating substance and were waiting for their customers to supply them intoxicating substance in the abandoned shops in front of Hardeep Marble House ahead of Tarlok and Sons Mills. On this ASI Jaspal Singh and other members of the police party reached near the abandoned shops as disclosed by the secret informer and nabbed three persons from there and on the suspicion of some intoxicating substance in their possession ASI Jaspal Singh gave information to the police station through mobile phone and requested to send a competent officer at the spot. A rapt was entered in this regard in Roznamcha and I, SI alongwith ASI Tara Singh 1400/HSP and HC Prabhjot Singh 1286/HSP. reached at the spot. I, SI enquired about the names and addresses from the 3 young boys detained by ASI Jaspal Singh at the spot. One of the person amongst them disclosed his name as Harpreet Singh alias Happy son of Satnam Singh, resident of Khakha, PS Tanda, the second person disclosed his name as Virender Singh alias Bindri son of Karnail Singh, resident of 6 Bassi Jalal, PS Tanda whereas the third person disclosed that his name as Harjit Singh alias Mintu son of Baldev Singh, resident of Baicha, PS Tanda. Thereafter, I, SI asked them as to why they were sitting there despite imposition of curfew, on this they disclosed that they were to consume and sell the intoxicating substance to their customers. I ASI told them that their personal search is to be conducted but they have got a legal right to get their search conducted from a magistrate or gazette officer and if they so require I can make necessary arrangements but above stated persons replied that they have full faith in me and I can conduct their personal search. On this consent under section 50 of the NDPS Act of above stated

persons namely Harpreet Singh alias Happy, Varinder Singh alias Bindri and Harjeet Singh alias Mintu was taken and before conducting their search efforts were made to join a witness from public but nobody from the public could be joined because of imposition of curfew. Search of Harpreet Singh alias Happy was conducted and intoxicating substance wrapped in a polythene envelop was recovered from the right pocket of his trouser, the weight of which was conducted at the spot with the help of digital weighing machine and same was 122 grams. The recovered intoxicating substance was put the same polythene envelop and a parcel of the same was prepared by putting the same in a plastic box. From the left pocket of Harpreet 12 syringes, 1 lighter and 2 pannis were recovered of which a separate parcel was prepared. Personal search of Varinder Singh alias Bindri was conducted and 135 gram intoxicating powder wrapped in a polythene envelope was recovered from his right pocket and from the same polythene envelope 13 syringes, 1 digital weighing machine, 1 light and 2 burnt pannis were recovered. The recovered intoxicating substance was put in the polythene envelop and a parcel of the same was prepared by putting the same in a separate plastic box whereas separate parcel of recovered syringes, lighter and pannis was prepared. Upon personal search of above mentioned Harjeet Singh alias Mintu, intoxicating substance wrapped in a polythene envelope was recovered from his left pocket the weight of which was conducted and same was 105 grams, which was kept in a plastic box in the same plastic envelope and parcel of the same was prepared. From his second pocket 8 syringes, 1 lighter, 2 pannis and 1 burnt Sagoon were recovered of which a separate parcel was prepared. I SI stamped all the parcels with my stamp CS and sample stamp was prepared separately. The stamp was handed over to ASI Jaspal Singh after use. All the parcels were taken into police possession through recovery memo. Above stated Harpreet Singh alias Happy son of Satnam Singh, resident of Khakha, P.S. Tanda, Varinder Singh alias Bindri son of Karnail Singh, resident of Bassi

Jalal, P.S. Tanda and Harjit Singh alias Mintu son of Baldev Singh, resident of Baicha, PS Tanda, District Hoshiarpur have committed offence punishable under section 22-61-85, NDPS Act and section 188 of IPC by violating the curfew order issued by Deputy Commissioner Hoshiarpur due to outbreak of Covid 19 and by keeping intoxicating substance in their possession for supplying the same to their customers. A ruqa has been written and is being sent to police station by hand CT Gagandeep Singh for registration of a case. Case be registered and its number be intimated. Intimation be given to control room. Special reports be issued to senior officers. I ASI and other officials are conducting investigation at the spot. SD/-Sahil Chowdhary SI, PS Tanda, district Hoshiarpur, dated 06.04.2020 today the area of opposite Hardeep Marble House, Dashmesh Nagar at 1:30 PM."

3. **CONTENTIONS**

On behalf of the petitioner

Learned counsel for the petitioner contends that the allegations against the present petitioner are that 105 grams of intoxicant substance (Alprazolam), 8 syringes, 1 lighter, 2 pannis and 1 burnt spoon were recovered from the present petitioner. He further submits that the quantity of recovered contraband that was effected from the present petitioner is marginally over and above the commercial quantity.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he was convicted in another case bearing FIR No.178, dated 02.08.2022, under Sections 302, 148, 149 IPC, Police Station Tanda. He further submits that 105 grams of intoxicant substance (Alprazolam) was

recovered from the present petitioner and the same is commercial in nature, therefore, Section 37 of the NDPS Act would be attracted in this case.

4. **ANALYSIS**

In the present case, the alleged recovery of contraband i.e. 105 grams of Alprazolam, 8 syringes, 1 lighter, 2 pannis and 1 burnt spoon was effected from the present petitioner and the same falls under the commercial quantity.

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..

In the esteemed view of this Court, the petitioner cannot be granted an advantage or permission to seek bail, especially when 105 grams of Alprazolam (the contraband in question) was recovered from him, which is commercial in nature. 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*** that

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.

Furthermore, the petitioner's criminal history, marked by involvement in one another case under Section 302 IPC, 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 01 year, 07 months and 04 days to grant bail at this stage would, in effect, subtly

convey a tacit endorsement or unintentional encouragement of such nefarious activities.

5. 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 commercial quantity, 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.

08.04.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No