

2025:PHHC:058789

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237

CRM-M-22921-2025
DECIDED ON: 05.05.2025

HARPAL SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Amandeep Singh Manaise, Advocate
Legal Aid Counsel for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J

1. **Prayer**

The jurisdiction of this Court under Section 482 BNSS has been invoked for the grant of regular bail to the petitioner in FIR No.102, dated 30.09.2023, under Sections 21(c) and 29 of NDPS Act, 1985, registered at Police Station Sadar Gurdaspur, District Gurdaspur.

2. **Facts**

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

“SHO PS Sadar Gurdaspur, Jai Hind. Today myself SI/ SHO along with ASI Harjit Singh 25, ASI Ravinder Singh 1291, CT. Navdeep Singh 1092, CT. Amanpreet Singh 36, CT. Ravinder Singh 78 were present on Government vehicle No.PB-06AK-0962 driven by PHC Gurmukh Singh 84 at Nabipur to Babri link road on the drain-bridge for patrolling and search of bad elements. Barricading was done and vehicles were being checked. At this, one motorcycle was seen coming from village Babri side, which I

indicated to stop with torch light, upon which the motorcyclist slowed down the motorcycle and tried to turn back. Three persons with shorn hair were sitting on the motorcycle and they were apprehended by me SI/SHO with the help of police party on suspicion. The person sitting in the middle of both the persons was holding a black coloured polythene bag in his hand. All three persons were asked to come down from motorcycle and myself SI/SHO disclosed my identity to them and inquired their name and address. The motorcyclist of black Splendor motorcycle No.PB07AY-3102 disclosed his name as Kuldeep Mash @ Gori son of Minda Mash, resident of Babri while the person sitting on the pillion holding a polythene bag in his hand disclosed his name as Sandeep Mash @ Kali son of Elias Mash resident of Lehal and the third person sitting on the pillion disclosed his name as Raman Mash son of Peter Mash resident of Babri. At this, myself SI/SHO said to three persons that I suspect that you have some intoxicating substance, so your search is required to be conducted but you have a legal right that you can get your search conducted through some Magistrate or some Gazetted Officer. Upon this, they were informed about notice u/s 50 of NDPS Act. In response to this, the above said three persons replied that they want to get their search conducted through some Gazetted officer. At this, myself SI/SHO prepared separated dissent memos of the above said three persons. Then myself SI/SHO called from Mobile phone No.98760-19107 at 10:42 PM to Sh. Sukhpal Singh, PPS, DSP, City Gurdaspur on his mobile Phone No.98723-43067 and informed him that three persons have been apprehended on the spot and they are suspected to have some intoxicating substance so you are required to reach the spot. After sometime, Sh. Sukhpal Singh, PPS DSP, City Gurdaspur reached the spot along with personal staff and the above said three persons were produced before him. At this, the DSP disclosed his identity to them and said that I am Sukhpal Singh posted as DSP Sub Division City Gurdaspur and I am Gazetted officer of Punjab Police. On inquiry, the motorcyclist disclosed his name as Kuldeep Mash @ Gori and the person sitting on the pillion

disclosed his name as Sandeep Mash @ Kali while the third person sitting on the pillion disclosed his name as Raman Mash. The DSP said that you have a legal right that you can get your search conducted through some Magistrate or through me, upon which they replied that we have full faith in you and you may conduct our search and the search of the polythene bag. At this, separate consent memos were prepared. Before conducting the search, effort was made to join some independent witness in the police party but it being dark, nobody got ready. Then on the instructions of DSP, I searched the polythene bag held in the hand of Sandeep Masih @ Kali who was sitting on the pillion, from which heroin was recovered, which was found to weigh 1 Kg 40 grams including the polythene bag. It was put in the plastic box and parcel was prepared which was sealed with my seal AS and by the DSP with his seal SS and was taken into police possession vide separate memo. Sample seal was prepared separately and seal after use was handed over to ASI Harjit Singh 25 while the DSP retained his seal SS with himself. The DSP left the spot after giving instructions and motorcycle No.PB-07AY-3102 was taken into police possession vide separate memo. Since accused Kuldeep Mash @ Gori, Sandeep Mash @ Kali and Raman Mash have kept 1 Kg 40 grams of heroin in black polythene bag in their possession, so they have committed offence u/s 21(c) of NDPS Act. Ruga is being sent by hand through Ct. Amanpreet Singh 36 to police station for registration of case. After lodging the FIR, FIR number be intimated. Special reports be issued and sent to the Illaqa Magistrate and officers concerned. Control room be informed on wireless. Myself SI along with police party is busy in investigation on the spot. Sd/- Amandeep Singh SI, PS Sadar Gurdaspur, dated 30.09.2023, in the area of Nabipur to Babri link road drain bridge at 12:50 AM.”

3.

Contentions

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of

co-accused, which has no value in the eyes of law. He further submits that no recovery whatsoever has been effected from the conscious possession of the petitioner and there is no cogent evidence with the prosecution to connect the petitioner with the alleged contraband.

On behalf of the respondent/State

Learned State counsel has filed the custody certificate of the petitioner, which are taken on record. He prays for dismissal of the present petition stating that 1 Kg 40 Grams of Heroin was recovered in the present case, which falls within the parameters of commercial quantity and therefore the rigours of Section 37 of NDPS would attract in this case. Additionally he submits that petitioner is a habitual offender, as he is involved in three other cases of similar nature, meaning thereby, he is indulged in the business of drug peddling.

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 petitioners 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 1 kg 40 *heroin*, stands recovered, though not from the petitioner, but from the other co-accused persons, who disclosed the name of the petitioner. As per the prosecution case, three accused persons namely Kuldeep Masih, Sandeep Masih and Raman Masih were arrested in the present case. The allegation against the petitioner is that he used to procure Heroin from the afore-mentioned persons for selling the same further, which is sufficient for this Court, to infer that the petitioner is indulged in the business of selling Narcotic Substances.

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 there is every possibility that the petitioner will again indulged in the business of illegal drug peddling, as he is involved in three other cases of similar nature.

Based on the aforementioned facts, the court can reasonably conclude that the petitioners are involved in a criminal conspiracy aimed at facilitating the commission of an offence. Upon perusal of FIR, it is clear that the petitioner, along with other co-accused, are 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 anticipatory 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

05.05.2025
sham

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