



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

216

CRM-M-27787-2024 (O&M)**Date of decision : 24.02.2025**

Ghukar Mall @ Baba Mall

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Abhimanyu Tewari, Advocate,
(through video conferencing) for the petitioner.

Ms. Avneet, AAG, Haryana.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), for grant of bail pending trial to the petitioner in FIR No.07 dated 07.01.2023, under Sections 21(c), 23 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Sadar Fazilka, District Fazilka.

2. Allegations are that petitioner was arrested on disclosure made by co-accused, namely, Harmeet Kamboj and Paramjeet Singh @ Pamma, who were found in possession of more than 31.20 Kilograms of heroin.

3. Contends that petitioner is in custody since 01.02.2024; after investigation, supplementary report under Section 173 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was submitted on



04.04.2024; charges were framed on 03.08.2024; and out of 18 prosecution witnesses, none has been examined so far.

3.2 Again contends that there is no apprehension that petitioner is likely to influence the prosecution witnesses or hamper the trial, in any manner.

3.3 Lastly contended that no recovery of alleged contraband was effected from the petitioner and he is not involved in any other criminal case.

4. *Per contra*, learned State counsel, on instructions from quarter concerned, has acknowledged the above factual position; but opposes the prayer on the premise that commercial quantity of contraband was recovered from co-accused and as such, bar under Section 37 of NDPS Act, would apply.

5. Heard learned counsel for both the sides and perused the paper book.

6. It is a matter of record that petitioner was granted interim bail by this Court on 11.12.2024 and the order reads as under:-

“Learned Counsel for the petitioner, while making reference to para 6 of the reply filed on 20.11.2024, submits that no recovery has been effected from the petitioner.

Faced with the above predicament, learned State Counsel seeks time to have further instructions.

Posted for 06.02.2025.

In the meanwhile, petitioner be released on interim bail in the present case till the next date of hearing on his furnishing adequate bail and surety bonds subject to the



satisfaction of learned Special Court/CJM/Duty Magistrate concerned.”

7. Learned State counsel is not able to controvert that after granting interim bail vide order dated 11.12.2024, petitioner is regularly appearing before learned Special Court and never misused the concession in any manner.

8. Also acknowledged by both sides that there is no other criminal case pending against the petitioner. Although recovery against the co-accused is alleged to be commercial in nature, but concededly, no contraband was recovered from the petitioner. Therefore, it would be debatable during trial as to whether petitioner was in any way connected with the recovery of alleged contraband. Be that as it may, at this stage, it is very difficult to comprehend that petitioner was in conscious possession of the alleged contraband.

9. Thus, in such a scenario, there is no hesitation to record the “Twin Test” satisfaction in favour of the petitioner as per Section 37(1)(ii) of the NDPS Act in the following manner:-

(i) *Prima facie*, there is no material to indicate that petitioner was found in conscious possession of the alleged contraband; hence, being a debatable question, shall be decided during trial and in such a scenario, it is very difficult to say that petitioner is guilty of the alleged offence.

(ii) After registration of the FIR in question, petitioner has not been involved in any case under the NDPS Act.

10. Needless to say that above “Twin Test” satisfaction has been recorded only for the purpose of bail application and same be not treated as an opinion on pending trial.



11. It is also not in dispute that petitioner remained in custody for about 10 months; supplementary report under Section 173 of Cr.P.C. was submitted on 04.04.2024; charges were framed on 03.08.2024 and out of 18 witnesses, none has been examined so far; thus conclusion of trial is likely to take sufficient long time.

12. Consequently, present petition is allowed. Interim order dated 11.12.2024 is made absolute. Petitioner shall be admitted to bail on his furnishing bail/surety bonds to the satisfaction of learned Special Court/Chief Judicial Magistrate/Duty Magistrate concerned.

13. Petitioner shall appear on each and every date of hearing and to fully co-operate with learned Special Court without seeking any unnecessary adjournment(s).

14. The above observations may not be construed as an expression of opinion on the merits of the case.

15. It is clarified that in case of recurrence or any misuse of concession of bail on the part of the petitioner, State of Punjab would be at liberty to move an appropriate application for recalling of this order.

Pending application(s), if any, shall also stand disposed off.

24.02.2025

d.gulati

Whether speaking / reasoned :

Whether Reportable :

(MAHABIR SINGH SINDHU)
JUDGE

Yes No

Yes No