249 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26486-2025
Date of Decision: 20.05.2025

Sandeep Singh @ Kaka ..... Petitioner

Versus

State of Punjab .....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Lakhwinder Singh Mann, Advocate for the petitioner.
Ms. Simran Goriya, AAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present second petition praying for granting regular bail in case FIR No.05 dated 09.01.2024 under Sections 21(C)/61/85 of NDPS Act, 1985 and Section 10, 11, 12 of Aircraft Act, 1934 registered at Police Station Khalra, District Tarn Taran.

2. Succinctly the facts of the case are that the police party while on patrolling and checking the bad elements on 09.01.2024, one Ranjodh Singh S/o Lakhwinder Singh informed them that one drone had fallen in his land in the field of wheat. On receiving the information, the Company Commander BSF was informed by the Police official. Thereafter, the police along with colleagues had taken Ranjodh Singh along with them and reached the fields pointed out by Ranjodh Singh and one drone was found lying there with yellow packet which was tied with kundi. The same was separated and on weighing it weighed to be 515 grams including packing material. Thereafter, it was found containing some contraband i.e. heroin and on weighing the same, it found to be 496 grams. The FIR was registered and investigation commenced. During investigation, on 02.02.2024, the secret

SHARMILA DEVI
2025.05.21 09:05
I attest to the accuracy and
integrity of this order/judgment
PHHC

information was received wherein names of 03 accused were informed including the petitioners, hence, they were arrayed as an accused. Resultantly, the petitioner was arrested on the next day i.e. on 03.02.2024. The petitioner approached the learned Judge, Special Court, Tarn Taran for grant of bail, however, after hearing both the sides, the same was declined vide order dated 03.06.2024. Thereafter, the petitioner approached this Court by way of filing CRM-M-30650-2024 for the grant of regular bail. However, after hearing both the sides, the same was allowed to be dismissed as withdrawn vide order dated 05.07.2024. Hence, again the petitioner has approached this Court by way of filing the present second petition.

3. Learned counsel for the petitioner, at the outset, prays for the grant of bail to the petitioner on the basis of parity with that of the co-accused, namely, Harjinder Singh @ Nikka @ Harwinder Singh. He has drawn the attention of this Court to the order dated 30.04.2025 passed in **CRM-M-60541-2024**, whereby, co-accused Harjinder Singh @ Nikka @ Harwinder Singh has been granted regular bail by this Court. He has submitted that the case of the petitioner is at par with the said co-accused. He submits that the petitioner is in custody since 03.02.2024. He submits that on the basis of the parity, the petitioner deserves to be granted bail as the case of the petitioner is similar to that of the said co-accused, who has already been granted bail.

4. Learned State counsel has endorsed the factum of grant of bail to the co-accused of the petitioner as stated above and has not denied that the petitioner is at par with the co-accused, namely, Harjinder Singh @ Nikka @ Harwinder Singh. However, he submits that the recovered contraband

SHARMILA DEVI
2025.05.21 09:05
I attest to the accuracy and
integrity of this order/judgment
PHHC

weighs 496 grams of heroin, which falls under the commercial quantity, and thus provisions of Section 37 of NDPS Act, are attracted. He, on instructions, has submitted that out of total 14 prosecution witnesses only 03 witnesses have been examined so far. He has placed on record the custody certificate of the petitioner. He submits that petitioner is involved in one more case of the similar nature.

5. After hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioner is behind bars since 30.02.2024 Co-accused, namely, Harjinder Singh @ Nikka @ Harwinder Singh is on bail and the case of the petitioner as stated is at par with him. Out of total 14 prosecution witnesses, 03 witnesses have been examined. As per custody certificate, the petitioner has suffered incarceration of 01 year 03 months & 14 days as on 19.05.2025. It further reflects that the petitioner is involved in one more FIR of the similar nature.

6. As held by the Hon'ble Supreme Court in ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260***, this Court is of the opinion that the case of the petitioner is covered by the ratio of law laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

> *19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made)*

SHARMILA DEVI
2025.05.21 09:05
I attest to the accuracy and
integrity of this order/judgment
PHHC

that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20 xxxxx

21 .....it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

22 xxxxx

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"[22] (also see Donald Clemmer's 'The Prison Community' published in 1940[23]). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.'

7. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the arguments raised by both the sides, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail to the petitioner on the basis of parity. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

8. It is being clarified that in case the petitioner does not furnish bail/surety bonds within a period of one week from today, his custody will not be counted in the present case after one week.

SHARMILA DEVI
2025.05.21 09:05
I attest to the accuracy and
integrity of this order/judgment
PHHC

9. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

20.05.2025
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No

SHARMILA DEVI
2025.05.21 09:05
I attest to the accuracy and
integrity of this order/judgment
PHHC