

CRM-M-46947-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46947-2024
Reserved on: 13.02.2025
Pronounced on: 28.02.2025

Ankur ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. B.S. Jatana, Advocate and
Mr. S.S. Sekhon, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0338	01.08.2024	Sadar Fatehabad, District Fatehabad	22(c) of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 12 of the bail petition, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	0295	29.09.2023	409 IPC and 52A of Prisons Act, Sections 7, 8, 11, 13(1), 13(D) of The Prevention of Corruption Act 1988, 66C & 66 D of Information Technology (Amendment) Act and 27(a) of NDPS Act	Sadar Mansa, District Mansa
2	284	17.10.2019	22/25 of NDPS Act	Sardulgarh, District Mansa

3. The facts and allegations are taken from the translated copy of FIR (Annexure P-1). On 01.08.2024, the investigator received a secret information that Karamveer, Satpal and Anil are indulged in selling intoxicant tablets. The informant further told that they are currently at Ratia Road at some distance from Village Hanspur on their bike and they are in possession of intoxicant tablets in large numbers and informant supplied the bike

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number and their details. Based on such information the investigator complied with the provisions of Section 42 of NDPS Act, laid down a naka and apprehended two persons and one person fled away from the spot. From their possession, the investigator recovered 1200 tablets weighing 549 grams.

4. In para 2 of the reply, it has been explicitly mentioned about the contents of the tablets, which reads as follows:-

“ xxx 120 strips each containing 10 tablets of NRX Tramlax-SR-100 Tramadol Hydrochloride Extended Release Tablets USP 100 mg having batch No.T240061, Mfg Jan 2024 and Exp. Dec 2025 weighing 549 grams were recovered...”

5. The arrested accused were subjected to interrogation and they revealed that they got acquainted with the petitioner when they were in jail and they had purchased the tablets from the petitioner. Based on this information, the petitioner was arraigned as accused in the present case and apprehending threats from arrest, came up before this court.

6. The petitioner's counsel seeks bail on the following grounds:-

“4. That it is pertinent to mention here that disclosure statement of co-accused against the other accused have no evidentiary value in the eyes of law, therefore, the petitioner deserves to be granted the relief of anticipatory bail on this ground alone.

5. That there is no evidence on record on the basis of which the name of present petitioner would be connected with the alleged recovery. Infact, the police has falsely involved the petitioner in the present case, whereas, the petitioner has no concern with the alleged recovery.

6. That moreover, the recovery has already been affected and nothing is to be recovered from the petitioner, therefore, the custodial interrogation of the petitioner is not required for any purpose and he is ready to join the investigation.”

7. Petitioner's counsel further prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

8. The State's counsel opposes bail and refers to following portion of the reply:-

“4. That during investigation, one day police remand of co-accused Satpal @ Satta was obtained from the Ld. Illaqa Magistrate and during police

remand, co-accused Satpal alias Satta again suffered disclosure statement and disclosed that "my mobile numbers are 98966-xxxxx & 87082-xxxxx; mobile numbers of Akur Mehta (co-accused) are 92575-xxxxx & 81606-xxxxx and mobile number of Karmveer alias Deepak is 70142-xxxxx and mobile number of Anil (co-accused) is 97100-xxxxx. He further disclosed that we used to talk with each other about buying and selling of drugs through above said mobile numbers and about 4-5 days ago, I had bought the recovered contraband from Hanspur Road Fatehabad near Swami Dhaba" True translation of disclosure statement of co-accused Satpal alias Satta is enclosed herewith as Annexure R-2 for the kind perusal of the Hon'ble High Court.

x x x x

8. That during investigation, Investigating Officer obtained Call details record of mobile numbers 98966xxxxx and 87082xxxxx of co-accused Satpal alias Satta and on perusal of the Call details record, there are several conversations of co-accused Satpal alias Satta with supplier of recovered contraband i.e. with co-accused Ankur Mehta on his mobile number 92575xxxxx and 81606xxxxx. Details of relevant Call details are enclosed herewith as Annexure R-3 for the kind perusal of the Hon'ble High Court.

x x x x

10. That moreover, there are also several conversations between co-accused Satpal alias Satta from mobile number 989655xxxxx and co-accused Anil on his mobile number 97100xxxxx. Details of relevant Call details are enclosed herewith as Annexure R-4 for the kind perusal of the Hon'ble High Court.

11. That the present petitioner-accused Ankur is a habitual offender and petitioner-accused Ankur has already been convicted in another case of NDPS Act bearing FIR No. 284 dated 17.10.2019 u/s 22, 25, 61, 85 of NDPS Act, Police Station Sardulgarh District Mansa (Punjab) in which he has been convicted for 10 years and fine of Rs. 1 Lacs vide order dated 24.02.2023 passed by Ld. Special Judge Mansa.

12. That role and evidence against the petitioner-accused Ankur is as under:-

(A). ROLE & CULPABILITY OF PETITIONER:-

(i) There are serious allegations against the present petitioner-accused Ankur as the recovered commercial quantity of contraband has been supplied by the petitioner-accused Ankur to co-accused Satpal alias Sattu near Swami Dhaba, Hanspur Rood Fatehabad.

(iii) Petitioner has been specifically named in the disclosure statement (Annexure R-1) of co-accused Satpal alias Sattu (who was arrested on spot)

(B) INCRIMINATING EVIDENCES:

(i) There are several Call details (Annexure R-3) record between petitioner-accused Ankur and co-accused Satpal alias Sattu

(ii) That location of mobile number of petitioner-accused Ankur was also of near the village Hanspur (the place where he had supplied the recovered contraband to co-accused Satpal alias Sattu).

13. That custodial interrogation of present petitioner is utmost essential to unveil the entire racket of smuggling of contraband and for proper investigation of the present F.I.R. In the event of dismissal of the present petition, the police custody of petitioner is necessary for proper investigation and to reveal the entire drug racket. There is likelihood that after being released on anticipatory bail, the petitioner will not co-operate in the investigation.”

9. State has also refers to para 5 of the status report dated 05.02.2025, which reads as follows:-

“5. That it is pertinent to mention here that as per Call details record, there are several conversations of co-accused Satpal alias Satta with present petitioner Ankur Mehta on his mobile number 92575xxxxx and 81606xxxxx who is supplier of recovered contraband in the present case....”

10. An analysis of the above arguments lead to the following outcome. The quantity involved prima facie falls under the commercial quantity because the quantity greater than 250 grams of tramadol would fall under commercial category and inviting the rigorous of Section 37 of NDPS Act. A Perusal of the bail petition does not satisfy the rigorous of Section 37 of NDPS Act. Be that as it may, an analysis of the evidence collected so far clearly points out conversation between the accused from whose possession the contraband was recovered and the petitioner as mentioned in para 8 of the reply (Supra).

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REASONING:

11. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply and the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

12. Given the above, the petitioner has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

13. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

- (a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [*Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Para 6].
- (b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [*Customs, New Delhi v. AhmadalievaNodira*, (2004) 3 SCC 549, Para 7].
- (c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [*UOI v. Prateek Shukla*, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].
- (d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [*Union of India v. Niyazuddin SK &Anr*, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].
- (e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [*N.R. Mon v. Md. Nasimuddin*, (2008) 6 SCC 721, Para 9].

- (f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].
- (g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].
- (h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].
- (i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].
- (j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].
- (k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].
- (l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].
- (m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].
- (n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]
- (o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].
- (p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

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(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[31]. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

14. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

15. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

16. **Petition dismissed.** Interim orders are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

28.02.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.