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CRM-M-48892-2024  
Date of Decision: 27.01.2025

...Petitioner

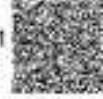
...Respondent

Mr. Akshay Kumar, A.A.G., Punjab.

ANOOP CHITKARA, J.

|         |            |                                   |                          |
|---------|------------|-----------------------------------|--------------------------|
| FIR No. | Dated      | Police Station                    | Sections                 |
| 0101    | 20.06.2024 | Civil Lines,<br>District Amritsar | 21-B, 61, 85 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. Vide order dated 27.09.2024, the petitioner was granted interim protection, which is continuing till date.
3. The facts and allegations are taken from the reply filed by the State. On 20.06.2024, based on a chance recovery, the Police had recovered 25 grams of Heroin from co-accused Princepal Singh @ Prince and Prabhdeep Singh @ Prabh who were on their bike. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. Both the co-accused were arrested and during their custodial interrogation, they made confession before the police that they had purchased the contraband from the petitioner. Based on this, petitioner was arraigned as an accused by adding Section 29 of NDPS Act.
5. Petitioner filed anticipatory before the Judge, Special Court, Amritsar which was dismissed on 13.09.2024. Feeling aggrieved, the petitioner has come up before this



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Court.

6. The petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner's counsel argued that the custodial investigation would serve no purpose whatsoever and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

7. The State's counsel opposes bail and refers to the status report.

8. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

9. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

10. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he had intimidated the witnesses, hampered the investigation, or, despite being called to join the investigation, did not appear before the investigator.

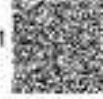
11. Given the penal provisions invoked coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for pre-trial incarceration at this stage.

12. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing the same for the bail stage.

13. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail.

14. Given the above, there would be no justification to discontinue the interim protection, which is made absolute subject to the petitioner complying with the terms of the bail order and the following additional conditions.

15. The petitioner is directed to join the investigation within seven days and as and



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when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

16. Given the background of allegations against the petitioner, it becomes paramount to protect the detection squad, witnesses, and members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

**17. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State shall file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.**

18. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

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



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20. **Petition allowed** in terms mentioned above. Interim order dated 27.09.2024 is made absolute. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)  
JUDGE

27.01.2025  
Jyoti Sharma

Whether speaking/reasoned: Yes  
Whether reportable: No