

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50916-2024
Reserved on: 13.01.2025
Pronounced on: 27.01,2025

Sukhwinder Singh @ Binder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Argued by: Mr. Mayur Karkra, Advocate,
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
145	17.06.2024	Tripuri, District Patiala	22, 29 of the NDPS Act.

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 Cr.P.C. (482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS]), seeking anticipatory bail.

2. The facts and allegations are taken from the reply filed by the State, which reads as follows:

3. That it is respectfully submitted that the brief facts of present case/FIR No. 145 (supra) are that on 17.06.2024, ASI Kamaljit Singh alongwith ASI Gurpreet Singh, ASI Harjinder Lal, L/SC Amarjit Kaur and Const. Ravitas were present at canal bridge, village Ronglan, in connection with patrolling and search of bad elements, at about 07:30 PM, one lady carrying polythene bag was seen coming on foot from village Ronglan side and upon seeing the police party, she threw the polythene bag at the side of the road and turned back, however, she was apprehended by the police party. Upon enquiring, she disclosed her name as Rani alias Kanti. Then ASI Kamaljit Singh asked her about the polythene bag thrown by her but she did not give any satisfactory answer. Thereafter, ASI Kamaljit Singh apprised her about his name and designation and served her notice under Section 50 NDPS Act that he had suspicion that there was some narcotic substance in the polythene bag thrown by her. He further told her about her legal rights that

she can get searched in the presence of any Gazetted Officer or a Magistrate, who can be called at the spot or arrangement can be made to produce her before them. Upon which, the lady deposed trust upon the ASI and agreed to get searched from him only. Accordingly, consent memo was prepared.

4. That upon the checking of the polythene bag thrown by Rani alias Kanti, 154 gm intoxicant powder was recovered. The intoxicant powder was put back in the same polythene bag and the polythene bag to put in a plastic box to prepare a parcel. Parcel was sealed by ASI with his seal bearing impression "KS". Hence, present case/FIR was registered against Rani alias Kanti for the offence under Section 22/61/85 NDPS Act.

3. The petitioner's counsel 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.

4. The State's counsel opposes bail and refers to the reply.

5. It would be appropriate to refer to the following portions of the reply, which read as follows:

5. That during the course of interrogation of accused Rani alias Kanti, she disclosed on 19.06.2024 that her husband Sukhwinder Singh alias Binder (present petitioner) used to purchase the intoxicant powder from an unknown person and further give the same to her for selling it further. It was responsibility of Sukhwinder Singh alias Binder (petitioner) to purchase the intoxicant powder and accused Rani alias Kanti had the responsibility of selling it further. Hence, Sukhwinder Singh alias Binder (petitioner) was nominated as accused and offence under Section 29 NDPS Act was added in the present case/FIR.

7. ROLE OF PETITIONER:- That the co-accused Rani alias Kanti disclosed that her husband Sukhwinder Singh alias Binder (present petitioner) used to purchase the intoxicant powder from an unknown person and further give the same to her for selling it further. It was responsibility of Sukhwinder Singh alias Binder (petitioner) to purchase the intoxicant powder and accused Rani alias Kanti had the responsibility of selling it further. Previously, there are various FIR's related to NDPS Act are registered against the present petitioner which are as follows:-

Sr. N	FIR detail
1	FIR NO 365/2016 U/s 18 NDPS Act PS Tripuri Patiala
2	FIR NO 31/2020 U/s 22 NDPS Act PS Bakshiwala
3	FIR No 200/2022 U/s 21 NDPS Act PS Tripuri Patiala
4	FIR No 283/2023 U/s 22, 27, 29 NDPS Act PS Tripuri Patiala

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6. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible. A perusal of the reply does not point out the steps taken to arrest the accused.

7. Pre-trial incarceration should not be a replica of post-conviction sentencing. 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 it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

8. Given the above, 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 custodial interrogation or the pre-trial incarceration at this stage. 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 anticipatory bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

9. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

10. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

11. The bail order is subject to the petitioner’s complying with the following terms.

12. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. 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.

13. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

14. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

15. Notwithstanding anything stated above, if the contraband falls under the commercial quantity because of the laboratory report, then the petitioner shall be informed and supplied with a copy of the FSL report. He shall be granted 7 days to file another anticipatory bail application before the Sessions Court or this Court seeking bail for commercial quantity by meeting the rigors of S. 37 of the NDPS Act. The present bail order shall automatically stand recalled on the 8th day of the communication of the report of FSL to the petitioner.

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

17. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

18. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

27.01, 2025

smriti

Whether speaking/reasoned: Yes

Whether reportable: No.

(ANOOP CHITKARA)
JUDGE