

220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52414-2024
Reserved on: 15.01.2025
Pronounced on: 27.01.2025

Bintu ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Prabhjot Kaur, Advocate for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
216	08.09.2024	Bass, District Hisar	20 BC 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. As per reply dated 31-10-2024, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	21	08.02.2024	20/51/85 of NDPS Act	Bass, District Hisar
2.	319	20.11.2023	20/61/85 of NDPS Act	Bass, District Hisar
3.	320	20.11.2023	20/61/85 of NDPS Act	Bass, District Hisar
4.	216	06.08.2022	20/61/85 of NDPS Act	Garhi

3. The facts and allegations are taken from the reply filed by the State. On Sep 08, 2024, based on prior information, the Police seized 25.265 kg of Ganja from the possession of co-accused Sunhari, the petitioner's mother. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. During custodial interrogation, the main accused, Sunhari, confessed before the Police officer that the petitioner had brought contraband for sale at home. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied him bail.

Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

5. 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.

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

7. It would be appropriate to refer to the following portions of the reply dated 31.10.2024, which read as follows:

“ That on dated 09.09.2024, during the course of investigation of the case, the co-accused namely Sunhari suffered her disclosure statement confessing her guilt and disclosed that about twenty days ago her son namely Bintu (Present Petitioner) had brought 30 Kg. ganja and out of them some was sold out by her to drug addict persons. She further stated that on 08.09.2024 she had been prepared for selling the alleged ganja and in the meantime, she had been apprehended by the police officials alongwith 25 Kg. 265gm. from her house corridor. Copy of disclosure statement of co-accused sunhari is annexed herewith as Annexure R- 1.

During the course of investigation, it has been found that present petitioner is directly involved in the commission of offence and co-accused Sunhari named the present petitioner in her disclosure statement during investigation that he had handed over the alleged Ganja 30 Kg. to co- accused namely Sunhari i.e. mother of present petitioner for selling and earn profit. It is pertinent to mention here that to trace out further source of the contraband the custodial interrogation of the present petitioner is very much required. It is specifically mentioned here that in the disclosure statement of co-accused Sunhari, the name of the present petitioner appeared as supplier of the contraband. Drugs are a menace to the society and it is imperative that entire nexus of persons involved in the drug trade are apprehended. So, the police have an absolute right to investigate a cognizable offence by taking the person in custody, if the police suspect that such a person is involved in the commission of cognizable offence. It is further submitted that custodial interrogation of the present petitioner-accused seems necessary to reveal the source from where the present petitioner had procured the alleged contraband as well as to identity of all the individuals

involved in the illegal drug-trafficking and also to complete the investigation. It was also found that the present petitioner is also a culprit who committed the offence. It has been also found that present petitioner is habitual offender and actively work in selling of narcotic substance, which shows from its criminal record.”

8. It would also be appropriate to refer to the following portions of the reply dated 09-12-2024, which read as follows:

"2. That, in compliance of order of the Hon,ble High Court vide order dated 05.11.2024, present petitioner joined in to the investigation on dated 07.11.2024. In furtherance of the investigation of the case he had interrogated by the investigating officer. During his interrogation many questions were asked by the investigating officer but he did not satisfactorily responded. In his interrogation he alleged that the contraband had given by Ramphal to his mother. He further stated that he had enmity with Ramphal because his name was surfaced by Ramphal in his disclosure statement in case bearing FIR No. 319/2023 and 320/2023 registered at Police Station Bass. He also admitted that he had sold the ganja to Ramphal. Copy of interrogation dated 07.11.2024 is annexed herewith as Annexure R-1. It is further submitted that present petitioner stated in his interrogation that the alleged ganja had given by the Ramphal in the month of first week of September by calling his mother through mobile number 80594-93561. He also admitted that his mother is illiterate lady and he called to Ramphal from the mobile of his father. It is pertinent to mention here that the investigating officer had taken the CDR of alleged number and from the same it has been found that no incoming or outgoing call was found from the mobile number 99916-31767, which was issued in the name of Ramphal. It is specifically submitted here that investigating officer also taken the CDR of mobile number of Ramphal and after going through the CDR and location, it has been found that Ramphal did not go to the village Puthhi during that period. It is further submitted that during his interrogation he disclosed that in the first week of September he went to Narnaul but his mobile location shows that he went to Delhi from 01.09.2024 to 05.09.2024. It is specifically submitted here that from the interrogation of the present petitioner it has been proved that he misguided the investigating officer and he concealed the fact that

from where he had purchased the alleged ganja, which was recovered from his mother.

3. That on dated 08.11.2024, Ramphal was joined into the investigation, he stated that two FIR Nos.319 and 320 of 2024 was registered against him and during investigation he surfaced the name of present petitioner namely Bintu in his disclosure statement that he had purchased the ganja from present petitioner Bintu. He further submitted that after getting the benefit of anticipatory bail he threatened Ramphal and his wife in the presence of Suresh son of Shri Parkash resident of Putti that his name was also surfaced in another case. Due to which he revealed their name in the present case.

4. During the course of investigation, it has been found that present petitioner is directly involved in the commission of offence and co- accused Sunhari named the present petitioner in her disclosure statement during investigation that he had handed over the alleged Ganja 30 Kg. to co-accused namely Sunhari i.e. mother of present petitioner for selling and to earn profit. It is pertinent to mention here that to trace out further source of the contraband the custodial interrogation of the present petitioner is very much required. It is specifically mentioned here that he is living with his parents in the same house at village Putti. During his interrogation he did not co-operate with the investigating officer and hide the facts of the case. Drugs are a menace to the society and it is imperative that entire nexus of persons involved in the drug trade are apprehended. So, the police have an absolute right to investigate a cognizable offence by taking the person in custody, if the police suspect that such a person is involved in the commission of cognizable offence. It is further submitted that custodial interrogation of the present petitioner-accused seems necessary to reveal the source from where the present petitioner had procured the alleged contraband as well as to identity all the individuals involved in the illegal drug-trafficking and also to complete the investigation. It was also found that the present petitioner is also a culprit who committed the offence. It has been also found that present petitioner is habitual offender and actively work in selling of narcotic substance, which shows from its criminal record. It is specifically submitted that four more cases were also registered under the

same offence against the present petitioner. The details of the cases are as under:

i) FIR No. 319 dated 20.11.2023 under section 20/27A-61-85 NDPS Act was registered at Police Station Bass - Undertrial.

ii) FIR No. 320 dated 20.11.2023 under section 20/27A-61-85 NDPS Act was registered at Police Station Bass - Undertrial.

iii) FIR No. 21 dated 08.02.2021 under section 20-61-85 NDPS Act was registered at Police Station Bass - Undertrial.

iv) FIR No. 216 dated 06.08.2022 under section 20-61-85 NDPS Act was registered at Police Station Garhi - Undertrial.

5. That, it is pertinent to mention here that if the Hon'ble Court grants the anticipatory bail to the petitioner, then the exact source of contraband from where he had purchased it could not be found out. It is specifically submitted that present petitioner played important role in the commission of offence that he had provided the alleged contraband to co-accused Sunhari for selling purpose as she is the mother of the present petitioner and he provided the contraband/Ganja to his mother, who was apprehended by the police at the spot alongwith contraband. It is specifically submitted that name of the present petitioner was surfaced in her disclosure statement by his mother. In this case recovery of amount is pending, which will be recovered from the present petitioner-accused. It is specifically mentioned that petitioner has not been falsely implicated in this case but he had committed the offence as per investigation of the investigating officer."

9. The quantity alleged in involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act.

10. In State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991, wherein the Hon'ble Supreme Court holds,

[8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

[9] To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

11. The quantity of heroin that was seized falls in the commercial category. Section 37' of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and is not likely to commit any offence while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offence punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

12. The State's counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

13. 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 exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. 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.

¹37. Offences to be cognizable and non-bailable.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such an offense and is not likely to commit any

offense while on bail. If either of these 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 the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.

15. The quantity involved is commercial, and the burden to satisfy the rigor of condition of Section 37 of the NDPS Act was on the petitioner, which he did not discharge to the satisfaction of the statutory requirements. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for anticipatory bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

16. The learned Special Judge, while dismissing the anticipatory bail of the petitioner, has given elaborative reasons and considered almost every aspect.

17. The grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act.

18. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union of India v. Padam Narain Aggarwal* (2008) 13 SCC 305].

19. The petitioner used his illiterate mother to sell drugs purchased by him, and such conduct is unethical and immoral beyond any comprehension and, if not dealt with sternly, is bound to create distrust and fissures in families.

20. A perusal of the bail petition and the documents attached prima facie points

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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.

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

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

(ANOOP CHITKARA)
JUDGE

27.01.2025
M.Sikka

Whether speaking/reasoned: Yes
Whether reportable: No.