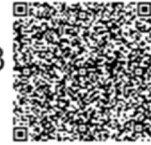


**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

2025:PHHC:092123



(218)

CRM-M-53769-2024

Date of decision: 24.07.2025

Nirvail Singh @ Navi @ Narvail Singh

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rishu Mahajan, Advocate for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

SUMEET GOEL, J.(Oral):

1. Present petition has been filed under Section 483 of BNSS, 2023 seeking grant of regular bail to the petitioner in FIR No.100 dated 27.06.2024, under Sections 21(C), 23, 27-A, 25, 29 of the NDPS Act, 1985 registered at Police Station Chheharta, District Amritsar.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“To, the Station House Officer, Station Chhehrata, Amritsar, Police Jai Hind, today myself SI along with ASI Gurjit Singh No.3057, ASI Heera Singh No. 227, ASI Narinder Singh No. 270 ASI Sarwan Singh No. 1644, HC Balwinder Singh No. 4238, HC Ranjit Singh No. 2215 carrying laptop, accessory and investigating Kit on barricading at turning were present point of village Kaley Bypass Chhehrta, Amritsar then a secret informer has informed to SI myself that Bachitar Singh@ Chatra son of Kashmir resident of village Janail, Singh Police Station Gharinda District Amritsar Rural, resident of Gali Tootian Wali, Guru Ki Wadali District Amritsar, are doing the work of Heroin selling and after of are bringing the heroin from Pakistan, they are supplying the same in the area Chhehrata. Presently, these persons sitting in Kothi No. 348, Shiva Enclave, Ajnal Road near Rajasansi,

Amritsar and if immediate raid be conducted then big quantity of Heroin can be recovered from them. The reliable, above information therefore is the on true basis and of said information, offence under section 21-C/23/29/61/85 of NDPS Act is made out. Therefore the Ruqa is being sent to the Police Station by the hand of HC Ranjit Singh No. Police 2215, Station Chheharat for registration of case, after register case, number of the same be intimated. Control room and Station House Officer, Police Station be intimated. After issuing special reports, same be sent to the Officers and Ilaqa Magistrate and Sh. Harbinder Singh, PPS, Assistant Commissioner of Police, PBI-cum-NDPS Narcotic Amritsar has been intimated about this secret information on his mobile No. 9915716423 to come to I the spot. along wiyh associate officials going to the spot as intimated by the secret informer. Today within the area Kaley Manjh, of Chhehrata Bypass, Amritsar at 03.20 PM Sd/- Jagga Singh, SI, Police Station Chhehrata, Amritsar dated 27.06.2024.”

3. Learned counsel for the petitioner has iterated that the petitioner has been implicated into the FIR in question on the basis of a disclosure statement made lateron by a co-accused. Learned counsel for the petitioner has argued that the petitioner is in custody since 04.09.2024. Learned counsel for the petitioner has further submitted that 30 prosecution witnesses have been cited but none has been examined till date. Learned counsel for the petitioner has further iterated that the case of the prosecution against the petitioner is primarily based on a disclosure statement made by a co-accused. Learned counsel has further submitted that mandatory provisions of NDPS Act have not been scrupulously complied with and, therefore, the case of the prosecution suffers from inherent defects. Learned counsel has further iterated that the petitioner is a man with clean antecedents.

4. *Per contra*, learned State counsel has strenuously opposed the instant petition by arguing that the allegations against the petitioner are serious in nature. Learned State counsel has further submitted that the FIR in

question pertains to recovery of 8.2 Kg alongwith Rs.95,000/- drug money and, therefore, the bar under Section 37 of the NDPS, 1985 is attracted. Furthermore, expressing concerns about the possibility of the petitioner fleeing from the trial proceedings, learned State counsel submits that petitioner ought not be granted the concession of regular bail. He has, accordingly, sought for dismissal of the petition in hand.

5. I have heard learned counsel for the rival parties and have perused the available record.

6. The petitioner was arrested on 28.06.2024 whereinafter investigation was carried out and challan was presented on 23.12.2024. Total 30 prosecution witnesses have been cited and none has been examined till date. It is, thus, indubitably that conclusion of trial will take its own time.

The prime prosecution evidence available against the petitioner, as decipherable at this stage, is the disclosure statement of a co-accused. This Court in **CRM-M-65094-2024 'Anshul Sardana Vs. State of Punjab'** has held as under:-

*"6. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as '**Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592**', relevant whereof reads as under:*

"155. We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a

confessional statement in the trial of an offence under the NDPS ACL"

More recently, the Hon'ble Supreme Court in a judgment titled as 'Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu Vs. State of Gujrat, Narcotics Control Bureau' 2024 INSC 290', has reiterated the ratio decidendi of the judgment of Hon'ble Supreme Court in the case of Tofan Singh (supra).

6.1 Further, the Hon'ble Supreme Court; while dealing with a plea for bail in a case under NDPS Act, 1985; in a judgment titled as 'State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.', 2022(1) RCR (Criminal) 762, has held as under:-

"9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act

10 It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arresis made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at

the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”

*6.2 Still further, the Hon'ble Supreme Court; while dealing with a plea for grant of bail in a case under NDPS Act, 1985; in a judgment titled as ‘**Vijay Singh vs. The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s) 1266/2023** decided on 17.05.2023’, has held as under:*

“The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act”. His application for anticipatory bail was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail.

Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose.

The petition is allowed.

All pending applications are disposed of.”

6.3 It is a well established principle of law that a confession made by a co-accused under Section 67 of the NDPS Act is inherently a very weak piece of evidence. Such statement(s), by themselves,

cannot form the sole basis for the conviction of an individual and must be scrutinized with utmost caution in conjunction with other substantive evidence. Moreover, no recovery has been effected from the possession of the petitioner, who has been subsequently implicated as an accused solely on the basis of disclosure statement of the co-accused. However, as regular bail pertains to life and liberty of individual, Courts are obligated to strike a balance between safeguarding personal liberty and ensuring the effective administration of justice as also investigation. The final evidentiary value and admissibility of the disclosure statement made by a co-accused fall within the domain of the trial Court and are to be adjudicated during the course of the trial in accordance with established principles of law. However, while adjudicating a plea for regular bail, this Court cannot remain oblivious to the circumstances under which the petitioner has been arraigned or implicated, including the nature of the allegations, the evidence linking the petitioner to the offence as well as the specific role attributed to the petitioner in the commission of the alleged offence. A prima facie examination of these factors is essential to ensure that the process of law is not misused, abused or misdirected.”

The rival contentions raised by the counsel give rise to the debatable issues which are essentially required to be ratiocinated upon during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, *lest* it may prejudice the rights of either of the parties. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence.

As per the custody certificate dated 23.07.2025, the petitioner has suffered incarceration for 1 year and 16 days and is shown not to be involved in any other case. Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned trial Court/Duty Magistrate. However,

in addition to conditions that may be imposed by the concerned trial Court/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

July 24, 2025

Naveen

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No