

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62879-2024
Reserved on: 01.04.2025
Pronounced on: 08.04.2025

Gurdeep Singh @ Sandeep ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Puneet Kumar Bansal, Advocate,
for the petitioner.

Mr. Adesh Pal Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
154	22.09.2022	City Jalalabad, District Fazilka	21 and 29 of NDPS Act (Section 25 of NPDS Act added later on) (Charges framed u/s 23, 21, 27-B, 25 & 29 of NDPS Act)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, seeking regular bail.
2. In paragraph 9 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 22.09.2022, based on secret information, the Police seized total amount of Rs.52,74,700/- of drug money from the possession of Gurnam Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. During the custodial interrogation of said Gurnam Singh, he disclosed that he along with Raj Singh and Gurwinder Singh @ Ginda had brought 22 kgs of heroin and again on 25.09.2022 he suffered another disclosure statement that on the intervening night of 21-22.09.2022, he along the above said co-accused had brought 23 packets of heroin from Pakistan smugglers through Indo-Pak international border and they kept 22 packets in the innova car and they have given one packet of heroin to their sister Mamta Rani and her husband Gurdeep Singh @ Sandeep (present petitioner); based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act. Thereafter, the petitioner and his wife made a disclosure statement that co-accused Gurnam Singh had handed over a packet of smuggled heroin to accused Mamta

Rani on 22.09.2022 and as per the said statements, heroin weighing 1 kg 65 grams was recovered from the petitioner and his wife.

4. The petitioner's counsel submits that the petitioner has been falsely implicated in the present case. His name has been surfaced only on the basis of disclosure statement of co-accused; no recovery has been effected from him and the petitioner is in custody since 25.09.2022 i.e. for more than 2 years.

5. The petitioner seeks bail on pre-trial custody of more than two years and six months. 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 his 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 status report, which read as follows:

“Role of petitioner:

6. That the role of petitioner in commission of offence has been established during the course of investigation. From the disclosure statement of co-accused Gurnam Singh it has been established that said Gurnam Singh etc. had given one packet of smuggled heroin to present petitioner Gurdeep Singh @ Sandeep and his wife Mamta Rani. This fact has also been corroborated by the disclosure statement of the petitioner and his wife. As per disclosure statement of petitioner and his wife and heroin weighing 1 kg 65 gram was recovered from petitioner and his wife. In this way, it has been unequivocally established that the petitioner is actively indulging in heroin trade at large level in connivance with other co-accused. Therefore, the petitioner cannot shirk his criminal liability.

7. That as per facts and circumstances of the case, there are specific and serious allegations against the petitioner. Moreover, the recovery in this case falls within in the purview of commercial quantity of such contraband. Therefore, the petitioner is not at all entitled to concession of regular bail. No cause of action has accrued to the petitioner to file the present petitioner. Hence the present petition is liable to be dismissed being devoid of any merits.”

REASONING:

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

9. As per the custody certificate dated 29.03.2025, the petitioner is in custody for 02 years and 06 months in this FIR.

10. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act¹.

11. The petitioner is entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Dheeraj Shukla would be attracted when the three conditions are fulfilled,

- (a). The custody of more than two years and six months and the delay was not attributable to the accused.
- (b). The trial is at an initial stage.
- (c). The petitioner is the first offender.

12. Considering the quantity involved and the pre-trial custody, Section 37 of the NDPS Act would not be attracted.

13. Given the penal provisions invoked viz-a-viz pre-trial custody, 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 further pre-trial incarceration at this stage.

14. 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.

CONDITIONS:

15. 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 concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

16. 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)	

¹ Supreme Court of India, in Rabi Prakash v. The State of Odisha, SLP (Crl) 4169-2023, Para 4, decided on 13 July 2023

17. This order is subject to the petitioner's complying with the following terms.

18. 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.

19. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection squad 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 firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a 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 of release from prison and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under 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.

20. 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."

21. In Md. Tajiur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon'ble Supreme Court holds in Para 7, "It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences."

22. **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 Trial Court, which shall be at liberty to cancel this bail.

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

24. 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.

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

**(ANOOP CHITKARA)
JUDGE**

08.04.2025

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.