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

CRM-M-64381-2024

Date of decision: 25.02.2025

Ashu Sachdeva

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Aditya Anand, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

This petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking modification of the impugned order dated 08.02.2024 (Annexure P-1) passed by the learned Judge, Special Court, Kapurthala, whereby, the petitioner was granted regular bail and was ordered to furnish bail bonds in the sum of Rs.50,000/- with two sureties i.e. one surety in the like amount and one cash surety to the tune of Rs.3 lakh in case BA-205-2024 arising out of FIR No.94 dated 31.12.2023 under Sections 21(b)/29/61/85 of the NDPS Act, 1985 registered at Police Station Dhilwan, District Kapurthala.

Learned counsel for the petitioner *inter alia* contends that producing such a heavy surety would suffocate the fundamental right of the petitioner enshrined under Article 21 of the Constitution of India and it is a trite law that imposing excessive bail condition infringes the very right of life and personal liberty of the accused protected by Article 21 of the Constitution of India. The quantum of surety and unreasonably high amount effectively defeats

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the right of the petitioner to seek bail. He further relies upon the judgment of the Hon'ble Supreme Court passed in Special Leave to Appeal (Crl.) No.3314/2024 titled as 'Ashok Sandeep Singh Vs. The State of Uttar Pradesh' and submits that the order impugned before the Hon'ble Supreme Court was set aside in which the quantum of surety of Rs.10 lakh was set aside and was reduced to Rs.25,000/- along with the personal bond of the same amount.

Per contra, the learned State counsel submits that the learned trial Court after due consideration of the material available on record, granted the bail to the accused/petitioner subject to imposition of cash surety to the tune of Rs.3 lakh and opposes the prayer made by counsel for the petitioner on the ground that the accused/petitioner is facing charges under Sections 21(b)/29/61/85 of the NDPS Act, 1985.

I have heard the learned counsel for the parties and perused the record of the case with their able assistance.

Personal liberty holds a pre-eminent position in our Constitutional framework, embodying the essence of fundamental rights enshrined in the Constitution. The imposition of an onerous condition such as a cash surety of ₹03 lakhs as a prerequisite for granting bail is antithetical to the principles of justice and fairness. Unless there exists a clear, compelling necessity for the deprivation of liberty, an individual should not be remanded to judicial custody. Judicial custody, it must be underscored, is preventive in nature and not punitive. The primary objective of bail is to ensure the appearance of the accused at trial, and this objective can be achieved by imposing reasonable conditions. A surety bond of such exorbitant value cannot be deemed reasonable in good conscience, as it effectively places a monetary price on



liberty, which is inherently invaluable. Deprivation of liberty must not be used as a form of punishment but rather as a measure of last resort to secure the ends of justice. The Court must remain mindful that social justice is the cornerstone of our Constitution, and no individual should be priced out of their liberty in the pursuit of justice.

The imposition of such an egregious condition would, in almost all cases, result in the accused being unable to furnish the required surety, thereby depriving them of their liberty and subjecting them to the harsh realities of jail life. The psychological and physical toll of incarceration during this phase can be devastating. The adverse impact extends beyond the individual to their innocent family members, who bear the burden of financial distress and emotional anguish. Such collateral damage undermines the principle of presumption of innocence and the larger goal of ensuring a fair and equitable justice system.

At this juncture, it would be apposite to cite the judgment of the Hon'ble Supreme Court in 'Moti Ram vs. State of M.P.' (1978) 4 SCC 47, wherein Justice Krishna Iyer observed as follows:

“15. It is interesting that American criminological thinking and research had legislative response and the Bail Reforms Act, 1966 came into being. The then President, Lyndon B. Johnson made certain observations at the signing ceremony:

“Today, we join to recognize a major development in our system of criminal justice: the reform of the bail system.

This system has endured - archaic, unjust and virtually unexamined - since the Judiciary Act of 1789.

The principal purpose of bail is to ensure that an accused person will return for trial if he is released after arrest.



How is that purpose met under the present system? The defendant with means can afford to pay bail. He can afford to buy his freedom. But the poorer defendant cannot pay the price. He languishes in jail weeks, months and perhaps even years before trial.

He does not stay in jail because he is guilty.

He does not stay in jail because any sentence has been passed.

He does not stay in jail because he is any more likely to flee before trial.

He stays in jail for one reason only—because he is poor...”(emphasis added)

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17. The Encyclopaedia Britannica brings out the same point even in more affluent societies:

“We should suggest that the Magistrate must always bear in mind that monetary bail is not a necessary element of the criminal process and even if risk of monetary loss is a deterrent against fleeing from justice, it is not the only deterrent and there are other factors which are sufficient deterrents against flight. The Magistrate must abandon the antiquated concept under which pre-trial release could be ordered only against monetary Bail. That concept is outdated and experience has shown that it has done more harm than good.”

Further, the Hon’ble Apex Court in ‘Hussainara Khatoon and others vs. Home Secretary, State of Bihar, Patna’, 1980 (1) SCC 98

highlighting the dire state of affairs opined as reproduced hereinunder:

“4. It is high time that our Parliament realises that risk of monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. Ours is a socialist republic with social justice as the signature tune of our Constitution and Parliament would do well to consider whether it would not be more consonant with the ethos of our Constitution that instead of risk of financial loss, other relevant considerations



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such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation. Of course it may be necessary in such a case to provide by an amendment of the penal law that if the accused wilfully fails to appear in compliance with the promise contained in his personal bond, he shall be liable to penal action. But even under the law as it stands today the courts must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties....”

In view of the discussion above, the present petition is allowed and the order dated 08.02.2024 (Annexure P-1) is hereby set aside to the extent of imposition of cash surety to the tune of Rs.3 lakh as a condition for granting bail.

(HARPREET SINGH BRAR)
JUDGE

25.02.2025

Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No