

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-65540-2024
Reserved on: 13.02.2025
Pronounced on: 19.02.2025

Surender Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sahil Gupta, Advocate and
Mr. Ravi Rai, Advocate
for the petitioner.

Ms. Harpreet Kaur, A.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
05	02.01.2024	City Hisar, District Hisar	21 (b) 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. Vide order dated 27.12.2024, interim protection was granted to the petitioner and the said order is continuing till date.
3. Per paragraph 9 of the bail application, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	260	01.04.2024	21 (b) of NDPS Act	Sadar Hisar

4. The facts and allegations are being taken from translated version of FIR, which reads as follows:

“To the SHO Police Station City Hisar. Jai Hind. On 02.01.2024, I, SI Sher Singh 1/FTB HSNCB Unit BWN, along with a laptop, printer, my team, HC Vikrant (No. 218/Hisar), Constable Narender (No. 2666/Gurugram), and vehicle HR 05 GV 1692 driven by Constable Surender (No. 5/505), was present in the jurisdiction of Police Station City Hisar, near the government hospital for patrolling and crime

prevention. At that time, a secret informer met me and gave information that a person named Manoj alias Modi, traveling in a Honda City car bearing registration number HR20-AC-0069, was carrying narcotic substance heroin for sale. The informant further stated that Manoj alias Modi was coming from Sector 33, Hisar, towards Sarvesh Hospital, Hisar. The informant assured that if a raid was conducted immediately, Manoj alias Modi could be apprehended with the heroin. Finding the information credible, I prepared a notice under Section 42 of the NDPS Act and had it entered into the daily diary report. The notice was sent to the higher authorities through Constable Surender. I briefed my team about the information and proceeded to Sarvesh Hospital, Hisar, near Cyber Police Station. There, I saw a coffee-colored Honda City car, HR-20-AC-0069, approaching. The car was stopped, and the driver was asked to step out. Upon inquiry, he identified himself as Manoj Kumar alias Modi, son of Surajbhan, resident of House No. 208, near Senior Secondary School, Patel Nagar Camp, Hisar. I informed him of the notice under Section 50 of the NDPS Act, stating that I had reasons to believe that he was in possession of a narcotic substance and that a search of his person and vehicle was required. I explained his legal rights to have the search conducted in the presence of a Gazetted Officer or Magistrate, who could be summoned to the spot or before whom he could be presented for the search. A notice was prepared, and both the witnesses and the accused signed it. The accused gave a written reply stating that he wished to have his search conducted in the presence of a Gazetted Officer and signed below his response. I contacted Civil Gazetted Officer Shri Sukhjinder Singh, DDA DETC (ST), Hisar, on his mobile number 94160xxxxx from my mobile number 94667xxxxx, briefed him about the situation, and informed him of the location. At 8:00 PM, Shri Sukhjinder Singh, DDA, arrived at the spot and was briefed about the situation. Following the protocol, Shri Sukhjinder Singh first conducted my personal search, during which no narcotic or objectionable substance was found. A formal record of this search was prepared. Shri Sukhjinder Singh then directed me to conduct a personal search of the accused, Manoj alias Modi. Given the movement of people at the spot, passersby were informed about the situation and requested to act as witnesses. However, all of them cited their own personal reasons due to which they could not be arrayed as witnesses and they went away from the spot. Following Shri Sukhjinder Singh's directions, I conducted a lawful search of the accused in his presence. During the search, a white plastic pouch was recovered from the right pocket of the lower garment worn by the accused. Upon opening the pouch, it was found to contain a substance suspected to be heroin. The recovered substance, suspected to be narcotics (chitta/heroin), was weighed using an electronic scale, including the plastic pouch. The total weight was found to be 08 grams and 10 milligrams. A separate parcel of the recovered substance was prepared, sealed with two seals marked "RK," and countersigned with a seal marked "DS" by Shri Sukhjinder Singh, DDA. A sample seal was also prepared. The seal used by Shri Sukhjinder Singh was retained by him, while the seal used by me was handed over to Constable Vikrant (No. 218) for

safekeeping. The recovered narcotics (parcel of heroin) and the Honda City car (HR 20 AC 0069) were seized as case property through a seizure memo. The memo was signed by the witnesses and the accused, Manoj alias Modi. Shri Sukhjinder Singh, DDA, also authenticated the seizure memo for the car. At 8:30 PM, Shri Sukhjinder Singh, DDA, left the scene due to other official duties. The accused, Manoj alias Modi, was found in possession of a total of 08 grams and 10 milligrams of heroin, thereby committing an offense punishable under Sections 21-B/61/85 of the NDPS Act.”

5. During custodial interrogation, co-accused Manoj @ Moji confessed before the Police officer that petitioner is one of the suppliers of the contraband. 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.

6. 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. He further submits that the main accused has already been granted the benefit of bail vide order dated 05.02.2024 passed by Additional Sessions Judge, Hissar.

7. The State's counsel opposes bail.

8. The evidence collected so far consists of disclosure statements. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of BSA, 2023.

9. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

10. Section 2 (vii-a) of the NDPS Act defines commercial quantity as greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

11. 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.

12. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he had intimidated the witnesses, hampered the investigation, or, despite being called to join the investigation, did not appear before the investigator. Given the above, there would be no justification to discontinue the interim protection, which is made absolute subject to the petitioner complying with the terms of the bail order.

13. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, it is insufficient for the purpose of bail.

14. Given the penal provisions invoked, the legal admissibility of evidence collected against the petition, 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 pre-trial incarceration.

15. Given the above, without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, no ground is made out to discontinue the interim protection.

16. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

17. 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.

18. 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)	

19. The bail order is subject to the petitioner's complying with the following terms.

20. 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.

21. Given the background of allegations against the petitioner, it becomes paramount to protect the detection squad, members of society, 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 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.

22. 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.

23. 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."

24. **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 Sessions Court, which shall have the liberty to cancel this bail.

25. The concerned trial court is authorized to delete, modify, or relax any of the above conditions and shall be competent to do so in accordance with the law.

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

27. 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.

28. **Petition allowed** in terms mentioned above. Interim order dated 27.12.2024 is made absolute. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.02.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.