

**HIGH COURT OF PUNJAB AND HARYANA
CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
DATE OF DECISION: 03.04.2024.**

CRM-M-49742-2022

Gurpreet Singh @ Happy ...Petitioner

Versus

State of Haryana ...Respondent

Legislation:

Sections 22(C), 27-A/61/85 of the NDPS Act.
Section 439 of CrPC.

Subject: Bail application in connection with FIR for violation of NDPS Act involving the recovery of Tramadol tablets.

Headnotes:

Bail Application under Section 439 CrPC - Petitioner seeking bail in connection with FIR under Sections 22(C) and 27-A/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) - Petitioner not found in possession of contraband, implicated based on disclosure statement of co-accused - Interim bail previously granted by Coordinate Bench - Prosecution relying on disclosure statements and recovery of contraband - Petitioner's counsel argues lack of recovery from petitioner and absence of misuse of interim bail - Referring to precedent, counsel asserts petitioner's entitlement to bail - Prosecution opposes bail citing disclosure statements and involvement of petitioner - Court notes prima facie evidence linking petitioner to offense but considers duration of custody and lack of grounds to dismiss petition - Bail granted with conditions - Petitioner directed to surrender weapons, firearms, ammunition, and restrict mobile phone usage to one prepaid SIM - Compliance mandated within specified timeframe - Precedent cited for imposition of similar condition - Petition allowed.

Decision: Bail granted to petitioner under Section 439 CrPC in connection with NDPS Act case - Petitioner directed to comply with specified conditions including surrendering weapons and restricting mobile phone usage.

Referred Cases:

- Shince Babu vs. State of Kerala and another, SLP No. 16642/2023.

Representing Advocates:

Mr. P.S. Sekhon for the petitioner.

Mr. Vikrant Pamboo, Sr. DAG, for the State of Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
352	16.08.2020	City Tohana, Fatehabad	District 22(C), 27- A/61/85 of NDPS Act

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.

2. Vide order dated 20.09.2023, Co-ordinate Bench of this Court had granted interim bail to the petitioner and the said order is continuing till date.

3. Prosecution's case is being taken from the reply dated 09.01.2023, which reads as follows:-

"2. That brief facts of the case are that above-mentioned F.I.R. registered on the complaint of Sub Inspector Sadhu Ram. Complainant asserted in the complaint that on 16.08.2020, SI Sadhu Ram along with other fellow police officials was present at Chandigarh Road, Tohana for crime and vehicle checking duty and in the meantime, one Maruti car was seen coming from the side of Tohana, in which two young boys were seen sitting. Complainant further asserted in the complaint that complainant gave signal to stop the vehicle, but the driver of the car suddenly turned back the vehicle and started fleeing towards city Tohana and complainant (SI Sadhu Ram) along with other fellow police officials followed the said vehicle and the two young boys parked the vehicle in a street near Punjabi Basti, Tohana and fled the spot after alighting from the vehicle. Complainant further asserted in the complaint that complainant (SI Sadhu Ram) along with other fellow police officials tried to apprehend both the young boys, but they succeeded in fleeing from the spot. The registration number of the car was found to be PB 10AE 9786 make Maruti-800 and one cloth bag was found kept on the rear seat of the said car. On having suspicion of some intoxicating material in the bag, complainant informed Sh. Gaurav Kansal, Executive Engineer cum-Duty Magistrate, Tohana on his mobile phone and he was requested to reach at the spot who reached at the spot after one hour. Complainant further asserted in the complaint that the vehicle was checked and the cloth bag kept on the rear seat of the vehicle was found containing 648 strips (containing 10 tablets

each) of Tramadol Prolonged Release Tablets Clovidol-100 SR bearing batch No. PTB-053 mfg. 05/2019, Exp.04/2021 (total 6480 tablets) total weighing 3 kg. 345 grams with weight of the strips. On further checking of the vehicle, one plastic bag containing 3095 strips (containing 10 tablets each) of Tramadol Hydrochloride 100 mg. Tablets Clovidol-100 SR bearing Batch No. 19647 mfg. FEB-2020, EXP. Jan/2023 (total 30950 tablets) total weighing 16 kg. 358 grams with weight of the strips, was also recovered from the boot of the car. The recovered contraband was converted into separate parcels and sealed with seal having inscription "SR" and Sh. Gaurav Kansal, Executive Engineer-cum-Duty Magistrate, Tohana also affixed his seal having inscription "RL" and the recovered contraband was taken into police possession vide a separate seizure-memo. Upon the complaint of complainant (SI Sadhu Ram), above-mentioned F.I.R. was registered at Police Station City Tohana, District Fatehabad (Haryana)."

4. Petitioner's counsel submits that no recovery was effected from the petitioner as he was arraigned only on the disclosure statement of co-accused and he was released on interim bail vide order dated 20.09.2023 passed by coordinate bench of this Hon'ble High Court. He further submits that the petitioner has never misused the concession of interim bail granted by this Hon'ble High Court and he is regularly appearing before the Trial Court. It is further submitted that the rigor of section 37 of the NDPS Act 1985 are not applicable with regard to the present petitioner as no recovery was effected from the petitioner, therefore, the case of the petitioner is supported by the judgment passed by Hon'ble Supreme Court of India vide Order dated 21.02.2024 in case titled as *Shince Babu Vs. The State of Kerala and another*, SLP No. 16642/2023. Counsel further submits that co-accused-Manpreet Singh Babbu has been released on regular bail vide order dated 19.07.2023 passed in CRM-M 31612 of 2023 by this Hon'ble Court. Petitioner's counsel seeks bail on merits as well as on sufficient pre-trial incarceration and submits that they would have no objection in any condition whatsoever including surrender of firearms and keeping of one mobile number.

5. The Hon'ble Supreme Court of India in ***Shince Babu vs. State of Kerala and another***, observed as under:-

1. *The petitioner seeks enlargement on regular bail in Crime No.110 of 2022, registered at Police Station Poochakkal, Kerala under Sections*

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22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act')

2. *The prosecution case is that Accused No.1 (Liju) was found travelling in a private bus from Cherthala to Arookutty and contraband MDMA, weighing 138.750 gms, was recovered from his conscious possession. The said contraband was procured by Accused No.1 with the help of Accused No.2 from Bangalore. The petitioner is nominated as Accused No.4 in the crime. He was arrested on 11.04.2022. The petitioner was granted bail by the Trial Court on 20.09.2022 but on a petition filed by the State of Kerala, challenging the bail order, the High Court cancelled the petitioner's bail on 13.06.2023. However, liberty was granted to the petitioner to apply afresh before the Sessions Court. The petitioner again applied for bail but his prayer was declined by the Trial Court on 07.07.2023. The petitioner approached the High Court but his first bail application was dismissed on 14.08.2023. His second bail application was turned down by the High Court on 09.10.2023. Meanwhile, Accused No.2 was granted bail by the High Court on 11.10.2023. Seeking parity with the co-accused, the petitioner moved third bail application, which has been rejected by the High Court vide the impugned order dated 09.11.2023.*
3. *We have heard learned counsel for the parties and carefully perused the material placed on record.*
4. *It may be seen from para 6 of the impugned order that the High Court, while declining bail to the petitioner, was largely influenced by the fact that a huge quantity of contraband, which falls in the category of 'commercial', was recovered and as such, the rigors of Section 37 of the NDPS Act are attracted. On a specific query, it is not disputed by learned State counsel that no contraband was recovered from the conscious possession of the petitioner. In such circumstances, it is difficult for us to apply the twin test of Section 37 of the NDPS Act while considering the petitioner's prayer for bail.*
5. *Be that as it may, the petitioner is in custody since 11.04.2022 except for the period from 20.09.2022 to 27.06.2023 when he remained on bail pursuant to the order passed by the Trial Court/Sessions Court.*
6. *It seems that the investigation is complete and the conclusion of trial will take some reasonable time. The petitioner's co-accused are already on regular bail/default bail.*
As per the record, there are no criminal antecedents of the petitioner.
7. *Taking into consideration all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail to the petitioner.*
8. *The petitioner is, accordingly, directed to be enlarged on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.*
9. *The petitioner shall remain present before the Trial Court on each and every date of hearing, failing which it shall be taken as a misuse of concession of bail granted to him today by this Court.*

6. Counsel for the State has opposed the bail and refers to para 4 of the reply, which reads as follows:-

"4(a). That after registration of above-mentioned F.I.R., investigation was entrusted to A.S.I. Mahender Singh no. 27, Police Station City Tohana.

Investigating officer upon demarcation of complainant S.I. Sadhu Ram no. 52/A, Incharge Police Post Chandigarh Road, Tohana, prepared the site plan.

b. That on 17.08.2020, during the course of investigation, Jaswant Singh alias Jassa son of Kundan Singh resident of Indira Colony, Tohana made call from his mobile number 9416443846 and called the investigating officer on spot. His statement u/s 161 Cr.P.C. was recorded. Jaswant Singh alias Jassa recorded that on 16.08.2020, when he was pouring fertilizer in his fields, then he saw 2 young boys running from Punjabi Basti to Indira Colony Tohana. Jaswant Singh further stated that one young boy was running ahead, was slim, whereas another boy was having strong built and he was running behind that slim young boy and strong built boy said to that boy running in front, "Bhagwan Singh take me with yourself". Jaswant Singh further stated that one blue colour polythene dropped in the fields by slim boy running in front. True copy of statement u/s 161 Cr.P.C. of Jaswant Singh alias Jassa is annexed as ANNEXURE R-1 for the kind perusal of this Hon'ble Court.

c. That on 17.08.2020, Jaswant Singh alias Jassa also produced the original RC of Maruti car number PB 10AE 9786, 2 pages of Form no. 29 & 30 having signature of Madhu Rani, affidavit of Joginder Singh regarding sale of car, photocopy of aadhar card of co-accused Bhagwan Singh, affidavit of Didar Singh regarding sale of car, pollution control certificate. Investigating officer took all the documents into police possession vide property seizure form and Jaswant Singh signed the property seizure form. True copy of seizure form is annexed as ANNEXURE R-2 for the kind perusal of this Hon'ble Court. Documents were found to Jaswant Singh alias Jassa in his fields which he has taken on rent for cultivation.

d. That investigation of above-mentioned F.I.R. was entrusted to Sub Inspector Surender Singh, Anti Narcotic Cell, Fatehabad.

e. That during the course of investigation, on 23.11.2020, upon secret information, co-accused Manpreet Singh alias Babbu was arrested in accordance with Law. On 24.11.2020, during the course of investigation, co-accused Manpreet Singh alias Babbu got recorded his disclosure statement wherein he disclosed that on 15.08.2020, co-accused Lovepreet alias Latti, Gurpreet Singh alias Happy (present petitioner) and accused Bhagwan Singh came to his village Jassowal Shuda (village of present petitioner). Co-accused Manpreet Singh alias Babbu further disclosed that they decided to purchase intoxicating tablets and coaccused Gurpreet from mobile number 82643-07991 (belonging to coaccused Manpreet Singh alias Babbu) called on mobile number 9950876723. Co-accused Manpreet Singh alias Babbu further disclosed that amount of Rs. 1,00,000/- was collected by all 4 persons by giving Rs. 25,000/- each and in the evening, he (co-accused Manpreet Singh alias Babbu) alongwith co-accused Lovepreet alias Latti, Gurpreet Singh alias Happy (present petitioner) and accused Bhagwan Singh reached in hotel near village Bhatla in the Maruti car bearing registration PB 10AE 9786 and another motorcycle and on 16.08.2020, he (co-accused Manpreet Singh alias Babbu) alongwith co-accused Lovepreet alias Latti, Gurpreet Singh alias Happy (present petitioner) and accused Bhagwan Singh purchased two bags of intoxicating tablets from person having mobile number 99508-76723 and accused Bhagwan Singh gave amount of Rs. 1 lac to person (co-accused Mukesh) having mobile number 99508-76723. True translated copy of disclosure statement of co-accused Manpreet Singh alias Babbu is annexed as ANNEXURE R-3 for the kind perusal of this Hon'ble Court."

7. Counsel for the petitioner submits that petitioner remained present before the Trial Court on each and every date of hearing and never misused the concession of bail granted to him by this Court vide order dated 20.09.2023.

8. An analysis of the arguments and pleadings would lead to the outcome that petitioner was named in the disclosure statement of Manpreet Singh. Although there is sufficient evidence prima facie connecting the petitioner with the offence but it also remains undisputed that as per para 4 of the petition, the petitioner is in custody since 16.04.2022 and the Coordinate Bench of this Court had granted bail to the petitioner on 20.09.2023 i.e approximately after 01 year & 06 months of the date of arrest. At this stage, no ground is made out to dismiss the petition.

9. 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 and order dated 20.09.2023 is made absolute, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

10. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in 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 offence.

11. The petitioner is directed not to keep more than one prepaid SIM, i.e., one prepaid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM

cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

12. Given above, **Petition is allowed** in the terms mentioned above. All pending applications, if any, stand disposed.

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