

2025:PHHC:019405



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215 CRM-M-29303-2024
DECIDED ON: 10.02.2025

SATPAL SINGH @ PALA SINGH
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CRM-M-44043-2024

SUKHDEV SINGH @ SUKHWINDER
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr Kulbhushan Raheja, Advocate
for the petitioner (in CRM-M-29303-2024).

Mr. Kuldip Singh, Advocate
for the petitioner (in CRM-M-44043-2024).

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J

1. **Relief Sought**

By this common order this Court intends to dispose off both the aforesaid petitions together, as both are arisen out of the same FIR.

To avoid any repetition the facts are being taken from CRM-M-29303-2024 titled as **“Satpal Singh @ Pala Singh vs. State of Punjab”**.

CRM-M-29303-2024 has been filed by Satpal Singh @ Pala Singh whereas CRM-M-44043-2024 has been preferred by Sukhdev Singh @ Sukhwinder. Both the petitioners are seeking regular bail in FIR No.272 dated

03.12.2022 under Sections 21(c), 23 of NDPS and Section 25 of Arms Act (Sections 27B, 29 of NDPS Act, 1985 added later on) registered at P.S Sadar Fazilka, District Fazilka.

2. Facts

The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“It is submitted that on dated 03rd Dec 2022 at about 0005 HRS BSF guard who were performing the sentry duty at BOP Sowarwall heard a humming sound of a suspected flying object which was coming from Pak side. Immediately they informed the Offg Coy Comdr Inspr Anil Basumatary and HC Pyarelal Bhatt. Immediately Coy Comdr alongwith HC Pyarelal Bhatt chased the flying object with gypsy which was driven by CT Dilip Chand At about 0020 Hrs again party heard the sound of suspected flying object. On hearing the sound HC (G) Pyarelal Bhatt fired 04 RDS from AK 47 body no.436234 towards the direction of flying object and in the meantime party saw some suspected movement in the agriculture field Again HC (G) Pyarelal Bhatt fired 05Rds from his weapon toward the movement of miscreants. In the meantime Offg Coy Comdr informed Sadqi Coy Comdr Sh JK Singh, AC as well as Sh Naresh Kumar Agrawal, DC/ADJT, Sh Dalbir Singh, 21C/Offg Comdt 55 BN BSF on mobile. After some time Coy Corndr SH. J K Singh, AC alongwith his party and SI (G) Awadesh Pandey alongwith 01 OR and SI (G) Deepak Singh alongwith 1 OR reached the spot and searched the surrounding area. During the Joint ops with local Punjab police, search party found 03 big size pkts of suspected to be heroin which were wrapped in yellow adhesive tape, 01 pistol with 02 magazine and 50 rds of 9mm ball in which 35 rds were kept in a tom pkt and 15 rds were found filled in a mag. After opening the recovered 03 big pkts inside 09 small pkts filled with suspected heroin were recovered In the meantime all the chokepoints were covered by SI Nitin Dagar along with 08 ORS At about 0140 hrs Sh Dalbir Singh, 21C/ offg comdt alongwith Sh Naresh Kumar Agrawal, DC/ Adjnt alongwith 04 ORS

reached at the spot. In the meantime local police lead by Sh Mohan Lal SP and Sh Shubeg Singh DSP Fazilka also reached at the spot after being telephonically informed about the incident. Again all the party including Punjab police searched the surrounding area but nothing was recovered Sh. Dalbir Singh, 21C/Offg Comdt gave the instructions to Offg Coy Comdr Inspr Anil Kumar Basumatary to keep eye/put a guard on the POO and directed to conduct search again in nearby area. Further again search OPS was conducted in the morning from 0730 hrs onwards and concluded a about 1130 hrs. During morning search with Punjab police team at about 0750 hrs party saw one bundle wrapped in a woolen shawl which was laying in agricultural field appx 50m away from the initial place of recovery. When the bundle of shawl opened, 07 big packets which were further kept in a white cloth bag were recovered. When big packets were opened 21 NO small packets (03 packets in each big packet) were found. Total recovery of consignment are as under.10 Nos big packet while opening these big size packets inside 30 Nos small packets filled with suspected to be heroin found (weight -26.850 kg with packing material), 01 pistol alongwith 02 magazines and 50 nos of 9mm amn and 02 woolen showls,02 white cloth bag 01 grey carry bag and one woolen cap were recovered from the POO Therefore, it is requested to lodge an FIR against the unknown miscreants. Investigation may be done at your end and outcome of the investigation may be intimated to this HQ for our record and further necessary action.

3.

Contentions

On behalf of the petitioners

Learned counsel for the petitioner(s) submits that the petitioner namely Satpal Singh @ Pala Singh has been falsely implicated in the present case on the basis of disclosure statement of co-accused Sukhdev Singh, (petitioner in CRM-M-44043-2024), who was also nominated as an accused in the present FIR on the basis of disclosure statement suffered by Tarsem Singh @ Sema. He further submits that no recovery whatsoever has been effected from the conscious

possession of the petitioners and there is no cogent evidence with the prosecution to connect the petitioner with the alleged contraband.

On behalf of the respondent/State

Learned State counsel has filed the custody certificate of the petitioners, which are taken on record. He prays for dismissal of the present petition stating that huge quantity of contraband i.e., 11 packets of heroin total 26 kg 820 grams were recovered in the present case and therefore the rigours of Section 37 of NDPS would attract in this case. Additionally he submits that petitioner namely Satpal Singh @ Pala Singh is a habitual offender, as he is involved in other cases of similar nature.

4. Analysis

In everyday terms, the principle of law dictates that bail is the general rule, while jail is the exception. However, this Court acknowledges that the power to grant or deny bail is extraordinary and must be exercised with caution. It is well-established that when considering a bail application (whether pre-arrest or regular bail), the Court must form a *prima facie* opinion as to whether reasonable grounds exist to support the accusation, or if the accusation is frivolous and baseless—possibly made with the intention of harming or humiliating the individual, or falsely implicating them in the crime. This evaluation must be conducted in light of the self-imposed restrictions and the broader legal parameters outlined.

This court at this juncture would first delve into the provision of Section 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, wherein it specifically provides that, individuals can be prosecuted if they are found to be buyers or sellers of contraband, especially in the context of conspiracy or abetment related to drug offences. This section specifically addresses the

penalties for those who assist or participate in a criminal conspiracy to commit an offence under the NDPS Act. It emphasizes that "*whoever abets, or is a party to a criminal conspiracy to commit an offence*" is subject to punishment under this law. Buyers or sellers though may not be found in conscious possession can be implicated under this section if there is adequate evidence demonstrating their involvement in a conspiracy related to drug trafficking.

An additional aspect that must be considered by this court is the frequent practice where individuals are implicated under Section 29 of the NDPS Act assert that they were neither present at the scene nor had any contraband in their conscious possession. Taking advantage of this defense, many such accused persons are granted bail. However, this practice needs to be addressed, as individuals targeted under Section 29 are often the primary masterminds behind the drug trafficking networks, orchestrating operations from a distance while using others, typically those found in direct possession of the drugs, as scapegoats. Consequently, the court is of the firm opinion that in such cases, these individuals should be held equally accountable and should not be afforded any leniency.

Furthermore, the drug is a social malady, while drug addiction eats into the vitals of the society whereas drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. The devastating effects of narcotic drugs on any person who comes to its touch are too well known. Normally, such a person ceases to be a normal human being, and is more or less reduced to zombie living animal existences and rushing fast to meet the maker. Divine qualities of an individual who consumes narcotic drugs disappear and they are the first sacrifices one normally makes while falling prey to

use of drugs. Anxiety of legislature is to prevent the adverse affect of such drugs and substances on the society.

In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

Going a step further it is negative burden casted on the petitioners to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

Adverting to the merits of the present case, wherein 26 kg 850 heroin, stands recovered, though not from the petitioners, but from the other co-accused persons, who disclosed their names. Moreover, the quantity recovered is

commercial in nature, therefore the rigours of Section 37 of NDPS would attract in this case and therefore, it would not be just for the Court to let the petitioners out added with the fact that one of the petitioner namely Satpal Singh @ Pala Singh is a habitual offender, as he is involved in two other cases of similar nature, which is sufficient for this Court to infer that the petitioners are indulged in business of selling Narcotic Substances.

Based on the aforementioned facts, the court can reasonably conclude that the petitioners are involved in a criminal conspiracy aimed at facilitating the commission of an offense. Upon perusal of FIR, it is clear that the petitioners, along with other co-accused, are engaged in the illegal drug trade, contributing to the addiction of young boys. As a result, these young individuals are resorting to theft and other criminal activities to satisfy their drug cravings. This highlights the state government's failure to address the growing drug problem, which is particularly alarming in Punjab. The widespread drug abuse is severely undermining the future of the country, as it is gradually eroding the youth population, much like a termite.

In light of these concerns, the court, as the guardian of its citizens, deems it essential to take decisive action against such offenders, especially when the lives and futures of the nation's youth are at stake. The drug epidemic must be tackled with the utmost seriousness. The illegal activities carried out by the individuals involved must be met with resolute measures. The intent of the legislature and the integrity of the rule of law must be preserved at all costs, and cannot be allowed to be undermined, irrespective of the quantity of drugs involved.

5. DECISION:-

Keeping in view the afore-said facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail.

Hence, the present petition is hereby, dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

10.02.2025
sham

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