

CRM-M-32981-2021

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

CRM-M-32981-2021  
Reserved on: 14.02.2025  
Pronounced on: 20.02.2025

State of Haryana

...Petitioner

Versus

Malkeet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Aashish Bishoi, DAG, Haryana  
for the petitioner.

Mr. Ravneet Singh Joshi, Advocate and  
Mr. Sukhmaj Singh, Advocate and  
Mr. Akash Patyal, Advocate  
for the respondent.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
182	15.11.2019	Guhla	420/120-B IPC and 3(A)/4/5/6/23/25 of PC/PNDT Act and 22(c)/29 of NDPS Act

1. Seeking cancellation of bail granted to the accused in the FIR captioned above, the State has come up before this Court under Section 439(2) of the Code of Criminal Procedure, 1973 (CrPC).

2. Vide order dated 30.01.2020, the trial court had granted bail to the accused on the grounds mentioned in the following paragraphs of the impugned order:

*"In the given circumstances, it becomes material that the applicant-accused is in custody for a period of approximately 2½ months. His age is also approximately 60 years. He is not a previous convict. Out of four previous cases alleged against the applicant, photocopy of cancellation report in one case has been put forth by learned counsel for applicant. His strong assertion has being that with other two cases also, the applicant has no connection and even his name is not present in the FIR. Charge is yet to be framed against the applicant and his co-accused. It is apprehended that the conclusion of trial may consume considerable period of time. No investigational formality is pending against the applicant, who*

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*is permanent resident of village Jhandli Khurd, P.S. Ahmadgarh, District Sangrur (Punjab), which coupled with age of the applicant, mitigate the chances of absconding of the applicant. Except the decoy witness, all other witnesses are public servants. So, chances of tampering with evidence by the accused do appear negligible. In the totality of above facts and circumstances, taking into consideration the length of custody period of the applicant, he is held entitled for the concession of bail, at this point of time. So, application in hand is allowed, subject furnishing personal & two surety bonds, in the sum of 1,00,000/- each, by the applicant-accused Malkeet Singh, to the satisfaction of learned Area/Duty Magistrate concerned.”*

3. The accused's counsel prays for bail by imposing any stringent conditions.
4. The facts are being taken from the copy of FIR, Annexure P-2, which reads as follows:

*“The statement is follows: To S.H.O. Police Station Guhla. Subject: For registration of FIR under P.C.P.N.D.T. and other different legal sections. On the subject cited above, on the basis of secret information received on dated 14.11.2019 to the effect that a gang who detect gender of pregnant ladies of Kaithal area or outside Kaithal, keeping in view of the same a team was constituted by Civil Surgeon Kaithal-cum-District Appropriate Authority under P.C. P.N.D.T. Act vide letter No. NHM/2019/2740 dated 14.11.2019 consisting of Dr. Gaurav Punia Nodal Officer, P.N.D.T. Kaithal, Dr. Neelam Kakkar, Deputy Civil Surgeon, Dr. Sanjeev Goel, Medical Officer Public Health Centre Bhagal. For that purpose Smt. Poonam wife of Sh. Amit Badsar now residing at Kaithal (pregnant about 4½ months) deputed to play a role of decoy and she was make understand to play a role of decoy in public interest and Smt. Poonam gave her consent for public interest in writing, vide letter dated 15.11.2019. On the basis of secret information dated 14.11.2019 Sh. Narender contacted to Malkeet Singh (son of Gurcharan as told by Malkeet) for detection of gender of a pregnant lady for which he demanded Rs.30,000/-and he agreed for it and asked to come on 15.11.2019 at about 1-2 noon near Urlana Gaggar River. As per plan on 15.11.2019 Rs.30,000/- was given to decoy Smt. Poonam by the team which was to be paid to Sh. Malkeet resident of village Jandli District Sangrur for detection of gender unauthorizedly, an office note in this regard was prepared in the office of Civil Surgeon Kaithal in which there were fifteen currency notes of Rs.2000/- denomination (No. 2BN828536, INA013471, 5LH971882, 0BR157367, 2AN527559, 9MV396491, 1BT398421, 0HP913090, 9KH485057, 7FK120525, 7CF191430, 8FE057944, 7DW942330, 3CB906285, 5FN613534). Team started its journey from Kaithal at 9.00 a.m. and reached at village Kharka at 11.00 am via Cheeka, Sh. Narender Kumar reached at village Kharka for taking decoy Smt. Poonam and told to the team that he is going to Urlana after taking decoy. After that team reached near village Urlana at about 1.00 p.m. via Sutrana and was*

waiting for Narender Kumar. Narender Kumar took decoy from Kharka to Cheeka for taking meal, at about 1.00 p.m. Narender Kumar made a phone call from Cheeka to Malkeet, Malkeet told that he is near Cheeka in XUV-5206 car and you come near Urlana Gaggar River, then Narender told whole story on phone to the team, at about 2.15 p.m. Narender Kumar reached at village Urlana and made phone call to Malkeet Singh, on this Malkeet Singh asked Narender to meet him near village boundary, during this period the team was waiting in the school. When Malkeet was going in his car in front of school, the team followed his car. Malkeet Singh took Rs.30,000/- from Smt. Poonam and he took decoy and Narender at a kacha path along with Gaggar river and he conducted ultrasound of decoy Smt. Poonam on the seat of co-driver of the car by putting jelly at her stomach and told gender girl. During this period Narender Kumar came out from the car and he gave a signal to the team as per plan, team disclosed its introduction after reaching on the spot and asked from decoy Smt. Poonam who detected gender unauthorized, she signaled towards a person who found Malkeet Singh and Malkeet Singh was apprehended by the team at the spot who was accompanied by one person Kulvinder son of Gurjant Singh resident of Dhola District Barnala (according to Aadhar card) who was driving the car make Mahindra XUV 500 (Mahindra XUV 500 No. PB-10GW-5206) of white colour. On asking by the team Malkeet Singh handed over the currency notes, of Rs.30,000/- which were given by Smt. Poonam to him after taking out from the right side pocket of his khaki pant, on comparison of numbers of these currency notes with the numbers which were recorded in the office, which were found same denomination notes. Recovered, currency notes were wrapped in a white paper and the same was converted into parcel and sealed with the seal of SG, Team, Malkeet and Kulvinder put their signatures on it. One ultrasound machine on which SONOSCAPE A6 was written, along with one probe C351 Curved Array, Sonoscape one Jelly (Mfd by Nice Pharmaceuticals Pvt. Ltd. 297, Phase-IV, Sector 57, HSIIDC, Kundi Manesar Area, Haryana Mfd. Date July-2019, Lot No.223, Contents:-250 gms) and car charger for ultrasound machine were recovered which were put in a box of cardboard and converted into parcel with a white cloth and sealed with the seal of SG and put signatures by Team, Malkeet and Kulvinder. For further proceedings the District Team handed over recovered articles (Jelly, Ultrasound and Probe instruments), Office order of constituting of team, Noting of currency notes, consent letter of decoy, Statement, Original OPD card, Ultrasound report, XUV Car. PB-10GB-5206, MTP Kit etc. and Malkeet Singh and Kulvinder to Police Post Ramthali Samadha Police Station Guhla. Medicine name salt name Batch No., Mfd By Mfd date ex. Date quantity MIFTY Kit Mifopristone and misoprostol T61900022 Theon Pharmaceutical 05/2019 04/2021 3 Kits Blank 3 with one tab in each kit. Some medicines were also recovered from the rear seat of the car details of which is as: SN Medicine name Salt Name Batch No. Mfd by Mfd Date ex. Date Quantity 1 SPAS-Primevon Tramadol Hydrochloride 50 mg, Acetaminophen 325 mg Dicyclomine Hydrochloride 10 mg. DTEC0297 digital vision Dec 2018 Nov 2020 199 capsules 2 TRAVON-50 Tramadol Hydrochloride 1.P.50 mg DTEC014 Zannet Pharma May 2018 Apr 2020 20 Capsules 3 Loose capsule of Green colour appears similar to be Travon-50 as recovered from same polythene 493 Cap. On recovery of these medicines District Drug Control Officer was

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*called at the spot and the recovered medicines were entrusted to him for further proceedings. You are requested to take appropriate legal action against Malkeet and Kulvinder. There are minimum five time cases are registered against him at different places: On 14.05.2016 (raid in Ludhiana), 13.03.2018 (raid, in Jandli Khurd) by Ambala team, (FIR No.24 dated 15.03.2018), dated 22.12.2017 (in Jandli Khurd) 10.08.2019 in Dhuri, (FIR No.128 dated 10.08.2019), by Kaithal team. On 04.11.2018 in Ratia (Fatehabad) (FIR no.601 dated 04.11.2018). Above said Malkeet Singh was found conducting unauthorized ultrasound time and again. He had conducted womb inspection of thousands pregnant ladies in the past 10-15 years due to which thousands innocent girls were killed prior taking the birth and such type of person is a stigma on the society and it is recommended to take the harshest action against him. Investigation be also conducted where from he has purchased the recovered ultrasound machine. Enclosures: Order for constitution of team, consent letter of decoy Smt. Poonam wife of Sh. Amit, Ultrasound report dated 5.11.2019 of decoy Smt. Poonam wife of Sh Amit, Office currency notes, Spot memo, statement of decoy Smt., Poonam wife of Sh.Amit, statement of Sh. Narender, recovery memo, currency notes recovery memo, Ultrasound machine, jelly recovery memo, MTP implements memo, MTP Kit, parcel of currency notes, parcel of ultrasound machine, jelly parcel, MTP implements parcel, MTP kit, two sample seals Car XUV500PB10GB5206. SD/ G.Punia 15-11.19. Dr. Gaurav Punia District Nodal Officer PNDDT Office Civil Surgeon Kaithal. Police proceedings:-*

*Today I am present in the Police Post. Dr. Punia District Nodal Officer PNDDT, Office Civil Surgeon Kaithal came along with Team consisting of Dr. Neelam Kakkar Deputy Civil Surgeon, Dr. Sanjeev Goel, Medical Officer Public Health Centre Bhagal, decoy Smt. Poonam wife of Sh. Amit Badsar now residing at Kaithal and Sh. Sunil. Dahiya District Drug Controller (DCO) Kaithal and made a complaint and produced accused Malkeet son of Gurcharan Singh resident of Jadoli Khurd Police Station Ahmadgarh City District Sangrur (Pb.), and Kulvinder son of Gurjant Singh resident of village Dhola Police Station Tapa-Mandi District Barnala (Pb.). From this complaint offences under section 3,4,5,6,6(c)18,23,25,29 PC-PNDDT Act, 420 IPC, 21(c), 22(c) NDPS Act are found to be made out and a writing is being sent to Police Station through ESI Kashmir Singh No.346. Special report be sent to the higher officers. I am busy in the investigation. Sd/- Mahender Singh ASI Incharge Police Post Ramthali. Dated 15.11.19 at 09.30 p.m. Case FIR No.182 dated 15.11.2019. under section 3,4,5,6,6(c)18,23,25,29 PC-PNDDT Act, 420 IPC, 21(c), 22(c) NDPS Act was registered with Police Station Guhla.”*

5. It shall be appropriate to extract the reasoning of Ld. Sessions Court while granting bail, which is in para 6 which reads as follows:

*“Prima-facie, main allegations against the applicant-accused are about contravention of the provisions of PC&PNDDT Act. The prosecution is proceeding on the basis of FIR directly registered by police, whereas in*

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*case titled Dr. Tejinder Pal Singh Multani Vs. State of Punjab and another, 2015 (2) R.C.R. (Criminal) 399, our own Hon'ble Punjab and Haryana High Court quashed the FIR against said petitioner, holding that as per provisions of Section 28 of the Act, there is specific bar to lodge FIR. So, it shall be a debatable question at the time of framing of charge.*

*So far as the allegations under NDPS Act are concerned, there is patent absence of service of notice under Section 50 of NDPS Act and as such, the question of gross violation of a mandatory provision shall be faced by the Court. It is significant to note that in case titled Gurjit Singh @ Basu Vs. State of Punjab, 2019 (1) Law Herald 54 Hon'ble Punjab and Haryana High Court has held that the drug 'Tramadol Hydrochloride' does not fall in the category of contraband drug, though a ten year old Notification dated 18.11.2009, reflects declaration by Central Government, that Tramadol be treated as Narcotic Drug and Psychotropic Substance and if its quantity is 250 grams or above, same would be considered as commercial quantity. It shall have to be technically understood, whether 'Tramadol' (as cited in the Notification above) shall be taken at par with 'Tramadol Hydrochloride'. So, it shall also remain arguable point, whether the drug involved in present case (i.e. Tramadol Hydrochloride) shall be considered a Narcotic Drug?*

*Even otherwise, in the present case as per column No. 7 of the Detail of NDPS in Allopathic Drugs (As per label claim) recovered from Malkeet Singh from car No.PB10GB-5206, the quantity as per label of NDPS Drug has to be computed as  $(9.95 \text{ gm} + 25.65 \text{ gm}) = 34.600 \text{ grams}$ , which is much below the opening weight of 'commercial quantity' of this Drug, i.e. 250 grams as prescribed in the notification dated 18.11.2009 (supra). The contention of learned Public Prosecutor, that whole weight of the drugs recovered, has to be reckoned for determining the nature of quantity of the drug, cannot be appreciated in the light of observations of our own Hon'ble Punjab and Haryana High Court in CRM-M-1904 of 2019 titled Gurmail Kaur Vs. State of Punjab, decided on 05.03.2019, that 'It may not be possible to accept the contention of the learned State counsel in view of the decision of in Dharam Singh's case (supra). Only 10 tablets from amongst 550 loose tablets were sent for chemical examination, which 2 of 3 CRM-M-1904-2019 [3] were found to contain 'tramadol'. This quantity is not commercial quantity.' Likewise, in the instant case, only 05 capsules out of 493 number of loose capsules were sent to FSL. So, the weight of 488 number of capsules has to be excluded for present, which comes out to be approximately 170 grams. After deducting this weight from the total*

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*weight of all tablets/capsules (304 grams), the reminder comes out as 134 grams, which is approximately half the weight of commercial quantity of such drug/s.”*

6. An analysis of the reasoning makes it very clear that S. 50 of the NDPS Act, which was not applicable, was wrongly applied, and pure drug substance and its weight was wrongly assumed.

7. However, scrutinizing the petition for cancelation of bail does not mention the weight of the substance recovered from the petitioner (respondent herein). Although the recovery took place on 15 November 2019, and the present petition was initially filed on 03 November 2020 and subsequently refiled on 16 July 2021 and after that on 12 August 2021, neither the report of FSL was attached nor was the total gross weight of the drugs explicitly mentioned anywhere in the petition. It shall be relevant to refer to Para 8 to 10 of the petition, which read as follows:

*“8. That the Ld. Court below has further failed to consider the fact that vide notification dated 26.04.2018 the Government of India has included Tramadol at Sr. No. 238ZH, wherein Small Quantity has been defined as 5 gm and Commercial Quantity has been defined as 250 gm. As far as the reliance of Ld. Court below on judgment of this Hon'ble Court in the case titled as Gurjit Singh @ Basu vs. State of Punjab | 2019(1) Law Herald 54 is concerned, it is submitted that the above-mentioned notification dated 26.04.2018 was not brought to the notice of the Hon'ble Court and resultantly, the same could not be relied upon. However, the fact remains that the notification dated 26.04.2018 still holds good and given the same the accused is liable to be tried for contravention of provisions of NDPS Act. However, the Ld. ASJ, Kaithal without taking into consideration the said aspect, went ahead and extended the concession of regular bail to the accused-respondent. Thus, on this ground as well the impugned order dated 30.01.2020 is liable to be set aside.*

*9. That the Ld. Court below has further wrongly declined to appreciate the contention of the Public Prosecutor that the whole weight of the drug recovered has to be taken into consideration. It is pertinent to mention here that as per Schedule attached to the NDPS Act, at entry No. 239 the following is mentioned:*

*Any mixture or preparation that of with or without a neutral material, of any of the above drugs.”*

*Furthermore, in Note (4), mentioned at the end of the table, the following*

is mentioned:

*"The quantities shown in Column 5 and Column 6 of the Table relating to the respective drugs shown in Column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage for or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content."*

*The above mentioned Note (4) was inserted in the Act vide notification No. S.O. 2941(E) dated 18.11.2009. The said notification was first challenged before the Hon'ble Punjab and Haryana High Court in CWP 18976 of 2013 and thereafter before the Hon'ble Supreme Court of India in the case bearing Criminal Appeal No. 722 of 2017 titled as Hira Singh and another versus Union of India and others. The Full Bench of the Hon'ble Supreme Court of India has held as under:*

*"(I). The decision of this Court in the case of E. Micheal Raj (Supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;*

*(II). In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;*

*(III). Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;*

*(IV). Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the*

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*same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act.*

*Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed."*

*Thus, in view of the above statutory provisions, it is amply clear that the whole weight of the prohibited substance has to be taken into consideration to determine whether the same falls under commercial quantity or not. In the present case the weight of contraband/ prohibited substance falls under commercial quantity. The Ld. Court below, contrary to the above said statutory provisions observed that the actual weight of Tramadol is to be considered and not the whole weight of the drug. Furthermore, one it has come on record that the recovered contraband falls under commercial quantity, the rigours of Section 37 NDPS Act comes into being. However, no satisfaction, as envisaged under Section 37 NDPS Act, has been recorded by the Ld. ASJ, Kaithal while extending regular bail to the accused-respondent [State of Kerala vs. Rajesh | 2020 AIR (SC) 721]. Thus, on this ground as well the impugned order dated 30.01.2020 is liable to be set aside.*

*10. That the Ld. Court below has wrongly observed that since only five capsules out of 493 loose capsules were sent to FSL, therefore, the weight of 488 capsules have to be excluded. It is pertinent to mention that the above said capsules were found from the car being used by accused at the time of the raid. Admittedly, at that time he was conducting pre-natal sex determination. All the 493 loose capsules were alike in appearance. Thus, a sample of five capsules amongst them was picked. It is of utmost importance to point out that these five capsules were picked randomly amongst 493 loose capsules. It is not the case that these five sample capsules were lying separately in the car. Therefore, it cannot be inferred that any prejudice has been caused to the accused by not sending all the 493 loose capsules to the FSL."*

8. There is nothing before this Court to assume the weight of the drugs except the averments made in para 10 of the petition. Despite the matter pending before this Court since 3 November 2020, no application was filed to place on record FSL. As such, there is nothing before this Court to take the quantity as commercial.

9. When the bail was granted, the petitioner (respondent herein) had already undergone two and a half months of incarceration. Respondent's counsel stated on

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instructions that they would have no objection if this Court imposed additional conditions. Given the above, this Court does not deem it appropriate to cancel the bail, which was already granted and following additional bail conditions are added in the order dated 30.01.2020.

10. Given the nature of the allegations and the other circumstances peculiar to this case, the respondent shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from today and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the respondent 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.

11. 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."

12. 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 respondent is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the respondent is bound to face the necessary consequences."

13. The respondent is not to seek any adjournments.

14. **The most significant and foundational condition is that if the respondent repeats the offense and indulges in any non-bailable offense that prescribes a sentence of more than seven years, the State shall file an application for cancellation of this bail before the Trial Court, which shall be at liberty to cancel this bail.**

15. In the facts and circumstances peculiar to this case, coupled with the imposition of additional conditions, no grounds exist to cancel the bail.

16. **The Trial Court is requested to expedite the trial as a top priority.**

17. Any observation made hereinabove is neither an expression of opinion on the case's

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merits nor shall the trial Court advert to these comments.

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

**(ANOOP CHITKARA)**  
**JUDGE**

20.02.2025  
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Whether speaking/reasoned: Yes  
Whether reportable: No.