

2025.PHHC.075883



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

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**CRM-M-27312-2025 (O&M)
DATE OF DECISION: 22.05.2025**

KULWINDER SINGH**...PETITIONER****VERSUS****STATE OF PUNJAB****... RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Mohd. Yusuf, Advocate for the petitioner(s).

Mr. Sandeep Singh, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)**1. Prayer**

This petition has been filed under Section 483 of BNSS, 2023 for the grant of regular bail to the petitioner in case bearing FIR No.10 dated 09.01.2024 U/s 22, 29 of (Act No.61) of Narcotic Drugs and Psychotropic Substances Act, 1985, and offence under section 42, 52-A of Prisons Act, registered at P.S. City Hoshiarpur District Hoshiarpur.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘Office of Senior Superintendent Central Jail, Hoshiarpur To SHO P.S. City Hoshiarpur No.443/ASW dated 09.01.2024. Subject: For taking legal action against unknown persons for throwing packet in the jail. Regarding the above mentioned subject, you are informed that today i.e. 09.01.2024 I was working Officially in the Warrant Office then I received information that at about 6:30 p.m. one packet wrapped with black cello tap has been thrown out side bairrak No. 18-21 from the side of Tower No.2 near Oven. This

packet has been recovered by head warden Satnam Singh 5428 who was posted at duty. Recovered packet was opened in front of the higher officers and from this packet 1295 orange colour tablets without wrapper, one Keypad Mobile Phone marka Lava of black colour without sim and battery having IMEI No. 352614110077734 & 352614110077742 and 2 packet of Tobacco. Throwing, keeping, bringing prohibited article in the jail is against jail rules. Therefore, while enquiring about the recovered material, case be registered against unknown persons and further action be taken. Copy of the case registered, be sent to this office. Sd/- Satnam Singh."

3. Contentions

On behalf of the petitioner

The learned counsel for the petitioner asserts that the petitioner has been wrongfully implicated in the present case on the basis of disclosure statement of co-accused Inderjit Singh, while he was in custody of the police in some other FIR No.24 dated 14.01.2024 under Section 20 of NDPS Act registered at Police Station City Hoshiarpur. He submits that recovery of contraband i.e. 1295 loose tablets in packet were not recovered from the conscious possession of the petitioner and as per the version narrated in the FIR the same were recovered from the jail premises thrown by some unknown persons.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which the petitioner has suffered incarceration of 6 months and 4 days. He prays for dismissal of the present petition stating that the petitioner is a habitual offender, as he is involved in other cases. Additionally he submits that the recovery of contraband i.e., 1295 loose tablets is fall

under commercial quantity, therefore, rigour of Section 37 would be attracted in the present case.

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 sub-section (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 petitioner 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 1295 loose tablets in packet stands recovered, though not from the conscious

possession of the petitioner, but from the Jail Premises and the petitioner was nominated on the basis of disclosure statement of co-accused Inderjit Singh, who stated that this packet has been thrown by the petitioner alongwith other co-accused persons. 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 petitioner out added with the fact that petitioner is a habitual offender, as he is involved in other cases of similar nature, which is sufficient for this Court to infer that the petitioner is indulged in business of selling Narcotic Substances.

Based on the aforementioned facts, the court can reasonably conclude that the petitioner is involved in a criminal conspiracy aimed at facilitating the commission of an offense. Upon perusal of FIR, it is clear that the petitioner, is 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 regular 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.

Pending application(s), if any shall disposed off, accordingly.

**(SANDEEP MOUDGIL)
JUDGE**

22.05.2025

Sham

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*