

CRM-M-56100-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56100-2024
Reserved on: 06.03.2025
Pronounced on: 27.03.2025

Vikram Singh @ Vicky

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ruhani Chadha, Advocate,
for the petitioner.

Mr. Adesh Pal Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
62	01.08.2023	Sarai Amant Khan, District Tarn Taran	21 (c) of NDPS Act (Section 29 of NDPS Act added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. As per paragraph 19 of the bail petition and as per paragraph 12 of the reply dated 06.01.2025, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	113	09.09.2019	21 of NDPS Act	Basant Bawa Khela, District Jalandhar
2.	155	17.10.2019	21 of NDPS Act	Badhni Kalan
3.	18	27.04.2022	411, 414 IPC & 3 IPC and 14 F Act and 3, 4, 5 of the Explosive Act	Dorangia, Distt. Gurdaspur
4.	108	05.06.2023	21-C of NDPS Act	Chehharta, Distt. Amritsar
5.	74	09.04.2020	52 of Prison Act	Kutiwal, Distt. Ferozepur
6.	154	22.07.2020	52 of Prison Act	Kutiwal, Distt. Kapurthala
7.	61	16.03.2021	52 of Prison Act	Kutiwal, Distt. Kapurthala
8.	57	13.03.2021	52 of Prison Act	Kutiwal, Distt. Kapurthala

3. The facts of the case are that on 01.08.2023, when police officials had raised a barricade, then they noticed two persons coming on a bike, the police officials became suspicious and signaled them to stop, however, they tried to flee, on which they were apprehended. On enquiry, they revealed their name as Gurbir Singh @ Gopi and Ravisher Singh. The investigator had suspicion that they were in possession of some contraband

and afforded them an option under Section 50 of NDPS Act to which they wanted their search in the presence of a Gazetted Officer. Later on, in the presence of a DSP, on search of Gurbir Singh a polythene bag was found which had 500 grams of heroin, similarly on search of Ravisher Singh Rs.20,200/- was found from his pocket, after that, they were arrested.

4. In the police custody, Gurbir Singh made the following disclosure statement which has been referred in paras No. 4 to 6 of the reply and the same reads as follows:

4. That during the course of interrogation of the co-accused Gurbir Singh, he voluntarily suffered his disclosure statement to the effect that "he has been indulged in the smuggling of Heroin and already two FIR's have been registered against him and during his judicial custody period, he met with one Vikram Singh alias Vicky son of Raj Singh i.e. the petitioner and after releasing from the jail, he was in contact with the petitioner Vikram Singh alias Vicky and the recovered Heroin was brought by him along with Ravisher Singh from the border of Rajatal through drone and this Heroin has to be supplied on the instance of Vikram Singh alias Vicky and on the instance of Vicky, he has taken drug money of Rs.1,50,000/- from some unknown person, out of which he has kept the drug money of Rs.50,000/- at his residential house and he can get recover the same" and on the basis of above said disclosure statement, the co-accused Gurbir Singh got recovered the drug money of Rs.50,000/- from his residential house on his demarcation.

5. That during the course of interrogation of the co-accused Gurbir Singh, he again suffered his disclosure statement to the effect that "2/3 days before the incident of this case, Vikram Singh alias Vicky son of Raj Singh called him on his phone and he said that he should work for him and then he told Vikram Singh that he has not done any work before and already a case of 3 Kilogram of Heroin is registered against him and he is on bail, then he agreed to do his work and Vikram Singh alias Vicky said him that he should go at village Sheron and near Sheron-Dhotian road, two persons will meet him and thereafter, two unknown persons came in a swift car, they stopped the car near him and asked his name, then they told him about Vicky, who is locked up in the jail and they gave him 500 grams of Heroin wrapped in a wax polythene and next day, Vicky told him that Jagroop Singh son of Makhan Singh, resident of Ladhewal will meet him and he shall hand over the Heroin to him and thereafter, the accused Jagroop Singh came on car make Alto and took the said Heroin with himself and the co-accused Jagroop Singh agreed to give money to him in 2/3 days". On the basis of disclosure statement suffered by the co-accused

Gurbir Singh, the petitioner namely Vikram Singh alias Vicky as well as co-accused namely Jagroop Singh have been nominated in the present case and the offence under Section 29 of NDPS Act has been enhanced in the present case.

6. That during the course of investigation, the arrest of the petitioner namely Vikram Singh @ Vicky has been made in the present case on 02.08.2023, after obtaining his production warrants from the learned Court of Area Magistrate and during the course of his interrogation, he voluntarily got recovered drug money of Rs.7,55,000/- (Rupees Seven Lakh and Fifty Five Thousand) from his residential house. Thereafter, the offence under Section 27-A of NDPS Act has been enhanced in the present case.

5. 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 his family.

6. Counsel for the petitioner has drawn attention of this Court to paragraph no. 8 of the bail petition explaining the amount in question involved. Para No. 8 is extracted as follows:

“8. That still further the production warrants of the petitioner in the present FIR (Annexure P-1) was obtained on 02.08.2023 and he was arrested in the present FIR (Annexure P-1) and further during the course of his interrogation, he made a disclosure that he had kept an amount of Rs.7,55,000/- at his residential house and the same had been kept hidden by him at his residential house and he can get recover the same. On the basis of said confessional statement, the petitioner got recovered the drug money of Rs.7,55,000/- from the residential house and offence under section 27-A of NDPS Act was enhanced in the present FIR (Annexure P-1).

Further, the story put forth by the prosecution is still not believable as the said amount which the prosecuting agency has stated to be alleged drug money, rather the said amount was returned by Gulf Manpower Consultant whose office is situated in Zirakpur to Kuljinder Singh, who is the brother of the petitioner as he had applied for VISA with the said Gulf Manpower Consultant. Kuljinder Singh had deposited a total amount of Rs.9,50,000/- with the said firm, but the VISA was not approved. In lieu of that 2 cheques were given to Kuljinder Singh i.e. of Rs.6,00,000/- and the second of Rs.3,50,000/- on dated 10.08.2023 and the said cheques were duly en-cashed. The copy of the letter issued by Gulf Manpower Consultant dated 26.07.2023 is attached herewith as annexure P-3.”

7. The State's counsel opposes bail and refers to the reply.
8. It would be appropriate to refer to the following portions of the reply, which read as follows:

“ROLE OF THE PETITIONER:

9. That as far as the role of the petitioner is concerned, it is submitted that there are specific allegations against the petitioner and Rs.7,55,000/- drug money has been recovered from the petitioner from his residential house and 500 grams of heroin has also been recovered from the co-accused Gurbir Singh and the recovery affected in this case i.e. 500 grams of heroin and drug money falls under the purview of commercial quantity as mentioned in the schedule attached with the NDPS Act and the provision contained in section 37 of NDPS Act has been attracted and there is complete bar under section 37 of NDPS Act, to release any person on bail in case the recovery affected falls under the purview commercial quantity.

EVIDENCE AGAINST THE PETITIONER:

10. That as far as evidence against the petitioner is concerned, it is submitted that the petitioner is indulged in smuggling of heroin and even, the co-accused has stated in their disclosure statement that they are indulged in smuggling of heroin in connivance with the petitioner and even, huge amount of drug money i.e. Rs.7,55,000/- has been recovered from the petitioner from his residential house. As such, there is sufficient evidence against the petitioner as well as co-accused and they are likely to be convicted in the present case.”

REASONING:

9. An analysis of above pleadings would lead to the following outcome.
10. The evidence against the petitioner is of disclosure statement and alleged recovery of Rs.7,55,000/- which the police claims to be the drug money. In addition to that, as captioned above, the petitioner has eight cases registered against him. However, as per the custody certificate, petitioner's custody in the present case is around 01 years and 06 months and the amount of drug money has already been recovered. Thus, in the entirety of facts and circumstances, more particularly that the evidence is in the shape of disclosure statement and the drug money has already been recovered and the petitioner's counsel statement that the petitioner undertakes not to repeat the offence and comply with all the conditions, this Court is of the opinion that further pre-trial incarceration is not justified in the given facts and circumstances, subject to the compliance of the conditions with clarification that if the petitioner violates any of the conditions, the State shall file an application for recalling of the present bail order.

11. Given the quantity the rigors of S. 37 of the NDPS Act do not apply in the present case.

12. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

13. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act¹.

14. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, as per paragraph 16 of the bail petition, the petitioner has been in custody since 02.08.2023. Given the penal provisions invoked viz-a-viz pre-trial custody, 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 further pre-trial incarceration at this stage.

15. 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.

16. 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.

CONDITIONS:

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 concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned 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)	

¹ Supreme Court of India, in Rabi Prakash v. The State of Odisha, SLP (Crl) 4169-2023, Para 4, decided on 13 July 2023

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

20. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

21. The petitioner shall not deal in drugs any more. If he is found involved in any drugs involving intermediate or more quantity, then the State shall file an application for cancellation of bail before the concerned trial Court and who shall be eligible for its cancellation.

22. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice can be taken care of by imposing elaborate and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)*, 2020:INSC:106 [Para 92], (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

23. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection squad 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 of release from prison 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.

24. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.**

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

26. 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.

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

(ANOOP CHITKARA)
JUDGE

27.03.2025

Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.