

2025:PHHC:075871



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-28261-2025 (O&M)
DATE OF DECISION: 21.05.2025

HARPAL SINGH ALIAS BHALA ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. MD Khan, Advocate for the petitioner.

Mr. Jastej Singh, Addl. A.G, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 482 BNSS, 2023 praying for anticipatory bail to the petitioner in FIR No.16, dated 02.03.2025, U/s. 21-C, 27-A, 29, 61, 85 NDPS Act, 1985 and 111 of BNS, 2023, P.S. Sultanwind, Distt. Amritsar. (Punjab). A Copy of FIR Dated 02.03.2025 herewith annexed as (Annexure P-1).

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

'The Inspector, Police Station, Sultanwind, Jai Hind, Today, I, ASI, along with ASI Vikramjit Singh 3259/ASR, ASI Gurdev Singh 3472/ASR, CT Lovepreet Singh 2305/ASR, CT Avtar Singh 4217/ASR, CT Jaideep Singh 1466/ASR along with my laptop, printer, riding over government vehicle number PB65-BG-5228, driver of which is CT Manjinder Singh

1411/ASR, in search of accomplices of gangsters, were going through the firni of village Sultanwind. Then, from the small street of chhappar, a non-turban was about to enter the firni, who was limping while walking, who was carrying a brown colour small bag on his left shoulder. Upon watching the police party all of sudden from front, immediately after being scared, turned towards backward and hurriedly, by walking through limping, started to enter a house, whom, on the basis of doubt, I have asked about name, address by stopping with the support of the accompanied personnel, who told his name, Jajj Singh son of Lakha Singh resident of Patti Baba Jiwan Singh, Village Sultanwind, Amritsar, whom, by telling my identification, I have said that I, ASI, posted Tajpreet Singh Ballet No.3446, am at police station Sultanwind, Amritsar. I have worn the uniform and my name plate has been affixed. I have a doubt on you of having any narcotic substance. Therefore, it is mandatory to search out you and your bag. You have a legal right that if you wish, search you can from get yours and you bags some Magistrate Gazetted Officer, who can be called on the spot by requesting and for this purpose, you can be taken to some Magistrate or Gazetted Officer. Then, Mr. Jajj Singh above said by speaking that I would like get the search of my bag and me from some Gazetted Officer in his presence. On which, I have prepared memo legal right, under Section 50 NDPS ACT as per offence. On the memo, Mr. Jajj Singh above, has put his signatures in Punjabi and the witnesses have put their signatures. On which, I have made informed Sh. Harminder Singh PPS/ACP Detective Commissionerate Amritsar with all the circumstances on his mobile No.79869-63242 and requested to reach on the spot. That after around 30 minutes of time, who came present on the spot along with Gunman team riding over government vehicle, who was made informed about the circumstances, who did enquiry from Mr. Jajj Singh above and by telling his identification, said that I, Harminder Singh

PPS/ACP Detective, am posted at 31 Commissionerate Amritsar, I have worn the uniform and I have affixed. I have got my a doubt name plate on you of having some narcotic substance. Therefore, a search has to be conducted of your bag and yours. That you have a legal right that you can get your search in front of some Magistrate or in front of some other Gazetted Officer. That in presence of the witnesses, Mr. Jajj Singh above has said to the DSP that I have full faith on you, you can conduct search of my bag and me. That Sh. Harminder Singh PPS/ACP Detective Commissionerate Amritsar has prepared memo of consent under Section 50 NDPS ACT as per procedure. On the memo, Mr. Jajj Singh above has put his signatures and witnesses have put their signatures, on which, Sh. Harminder Singh PPS/ACP Detective Commissionerate Amritsar before conducting search of Mr. Jajj Singh, said to me to involve any public witness into police party, for which I tried but everybody has shown their inability and none of the private person could be involved into police party, on which, Sh. Harminder Singh PPS/ACP Detective Commissionerate Amritsar, in his presence, ordered me to conduct search of Mr. Jajj Singh and his bag and at the time of conducting search, video graphy in my mobile phone got started taking by CT Jaideep Singh 1466 on E-SAKSHYA APP, on which, I, by taking off small bag colour brown from the left shoulder of Mr. Jajj Singh above, after opening the zip of the bag, have conducted the search. Then, from the bag, heroine lying in a transparent plastic envelope and Rs.500/500 some notes in a bundle and Rs.100/100 some notes drug money, were recovered. That I have weighed the recovered heroine along with transparent plastic envelope on my computer libra, which become 266 gram heroine. That by putting the recovered 266 gram heroine along with transparent plastic envelope in a separate box plastic, by preparing the parcel, sealed the parcel with my stamp words TS, on which, Sh. Harminder Singh PPS/ACP Detective Commissionerate

Amritsar has also sealed with his stamp words HS and counted the recovered Indian currency notes. That of Rs.500/500, 80 notes total 40 thousands rupees and of 100/100, 10 notes, total 1,000 rupees, that total recovery 41,000 rupees. Indian currency notes drug money. Was recovered. That by putting the recovered Rs.41000/- drug money in that brown colour small bag, after preparing cloth parcel, the parcel cloth was sealed by me with my stamp words TS, on which Sh. Harminder Singh PPS/ACP Detective Amritsar has sealed with his stamp words HS, sample seal TS/HS was prepared separately, form No.4 was completed and Sh. Harminder Singh PPS/ACP Detective Amritsar, after use, kept the stamp with him and after use, I have handed over the stamp to ASI Vikramjit Singh 3259/ASR. different parcels of The recovered 266 gram parcel heroine duly sealed with TS/HS along with sample seal TS/HS with form No.4 and Rs.41,000/- currency notes, were taken into police custody through memo of recovery. Memo of recovery of heroine, drug money was prepared as per procedure. On the memo, accused Jajj has put his signatures, witnesses have put their signatures. The verification of recovery was done by Sh. Harminder Singh PPS/ACP Detective Amritsar. That Mr. Jajj Singh above, by keeping in his custody, 266 gram heroine and drug money Rs.41,000/- Indian currency, has committed the offence therefore, 21C, for 27 A-61-85 NDPS ACT, registration of FIR, by getting the printout, written message/ rukka is being sent to the police station through hand Constable Lovepreet Singh 2305/ASR, after registering the FIR, number of case may be intimated. After preparing special reports, may be sent to the Hon'ble District Magistrate and officers, information be given on the control room. I along with accompanied personnel get busy on the spot in investigation. Today, within limits area Village Sultanwind Amritsar 07:45 PM. SD/-Tajpreet Singh ASI Police Station Sultanwind District Amritsar, dated: 02-03-2005. Today, at police station: At this time, on receipt of above writing

at police station, by registering the above FIR under above sections, original writing with copy of FIR, are being sent through hand arrived employee private to ASI on the spot. After issuing special reports, are being sent through hand ASI Jaspal Singh 1474 in the District and Magistrate service of officers. Information is given on control room to the Inspector Police Station through telephone.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of co-accused Jajj Singh from whom the recovery of 266 grams of heroin and Rs.41,000/- drug money was recovered. He undertakes on behalf of the petitioner that he is ready and willing to join the investigation.

Notice of motion.

On behalf of the State/complainant

Mr. Jastej Singh, Addl. AG. Punjab, accepts notice on behalf of respondent-State and prays for dismissal of the present petition on the ground that the petitioner is the real brother of co-accused Jajj Singh, from whom 266 grams of heroin along with drug money amounting to ₹41,000/- was recovered and the contraband 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.

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.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if

no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

More so, investigation is still going on in the present case.

It is settled proposition of law that power exercisable under Section 482 BNSS, is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in **“State vs. Anil Sharma”; (1997) 7 SCC 187**, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not

be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

5. **Conclusion**

Turning to the merits of the case in hand, where 266 grams of heroin alongwith drug money i.e., Rs. 41,000/- was recovered, though not from the petitioner but from the co-accused Jajj Singh, who disclosed the name of the petitioner and is the real brother of the petitioner. Moreover the quantity involved in the present case in commercial in nature, therefore, bar of Section 37 of NDPS would attract in the case added with fact that the petitioner 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 petitioner is indulged in the business of selling Narcotic Substance. There is a distinct possibility that, if granted bail, the petitioner will once again partake in this unlawful enterprise. To grant bail at this stage would, in effect, subtly convey a tacit endorsement or unintentional encouragement of such nefarious activities.

6. **Decision**

In the light of above, dictums and discussions made and the modus operandi of the kingpins engaged in illicit activities, whether trafficking in small or intermediate quantities, must be met with unwavering resolve and stringent action. The intent of the legislature and the sanctity of the rule of law must be upheld at all

costs, and cannot be allowed to be undermined, regardless of the quantity involved.

Hence, the same stands dismissed with no order as to costs.

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

(SANDEEP MOUDGIL)
JUDGE

21.05.2025
Sham

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No