

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

CRM-M-3015-2025
Reserved on: 01.04.2025
Pronounced on: 23.04.2025

Tek Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Naveen K. Sheoran, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
266	04.06.2024	Hisar, District Hisar	18-B, 27-A of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC/ Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. Per paragraphs 13 and 14 of the bail application and paragraph 22 of status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	145	26.09.2020	22-C of NDPS Act	Jakhal
2.	57	31.03.2024	61 of Punjab Excise Act	Jakhal

3. The facts and allegations are taken from the status report filed by the State. On 04.06.2024, when SHO along with police team was on patrolling, then they received information against four persons namely Sunil Kumar, Lalita Devi, Kamla Bai and Raju Bairagi dealing in smuggling of opium. The informer also gave description of such persons and about their belongings. Based on this, the Investigator claimed to have complied with provisions of Section 42 of NDPS Act and went to the place where according to informer, those persons were present. On reaching the park, they noticed four persons and subsequently their search was allegedly conducted after complying with the provisions of Section 50 of NDPS Act. The search was conducted before Gazetted Officer. Nothing was recovered from the personal search of any of the persons however

on search of the bag of the lady, 02 kgs 684 gms of opium was recovered and based on this, they were arrested. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. During the custodial interrogation of the accused Raju Bairagi, he disclosed the petitioner as the supplier of the drugs; based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.

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 their family.

6. The State's counsel opposes bail and refers to the status report.

7. Counsel for the petitioner submits that the evidence against the petitioner is of disclosure statement alone.

8. It would be appropriate to refer to paras no.6 to 8 of the status report which reads as follows:

"6. That on 06.06.2024, co-accused Raju Bairagi again suffered his disclosure statement (Annexure R-1) wherein he disclosed that "when I used to come to Hisar for supplying opium to Jai Bhagwan (co-accused), then, about 5/6 months ago, I also met with Tek Singh (petitioner-accused) in Hisar who is also involved in the business of opium smuggling and I started bringing and supplying opium for Tek Singh (petitioner-accused) also. He further disclosed that Tek Singh (petitioner-accused) demanded 1 kg 100 gram of opium by calling from his (Tek Singh's) mobile number 97295-22371 and Jai Bhagwan (co-accused) demanded 1 kg 650 gram of opium from his mobile number 81094-01446 on my mobile number 89596-15978 and about 15-20 days ago, I had bought 2 kg 650 grams opium from Babu resident of village Karnali district Mandsaur at the rate of Rs. 1,20,000/- per kg. and I had to pay the money for the opium to said Babu after selling the said opium. Then I brought the opium and kept it at my house without telling anybody and about 5-6 days ago, I gave 2 kg 650 grams opium to Kamla Bai (co-accused) at my house, telling her that on 03.06.2024, I will reach Hisar Haryana and she should take the opium and reach Hisar on 04.06.2024 in the morning at Jindal Park, Hisar along with your trusted people and he will meet her at Jindal Park, Hisar. I reached Hisar on 03.06.2024 in the morning and from Hisar I went to the house of Tek Singh (petitioner-accused) in Jakhal. I fixed the price of opium with him at Rs. 1,80,000 per kg and Tek Singh (petitioner-accused) had to pay the money for 1 kg 100 grams opium after receiving the opium. Then on the same day in the evening, I went to the house of Jai Bhagwan (co-accused) and there also I fixed the price of opium with Jai Bhagwan (co-accused) at Rs. 1,80,000 per kg. and Jai Bhagwan (co-accused) had to pay the money for 1 kg 550 grams opium after receiving the

opium. I stayed at Jai Bhagwan's house in his village Bhatla on the night of 03/04-06.2024.

7. *That on 08.06.2024, co-accused Raju Bairagi again suffered disclosure statement and disclosed the complete details of supplier of opium as Nathu Lal alias Babu son of Nand Lal resident of village Sedra District Mandasaur having mob. no. 63037-34339.*

8. *That during investigation, Investigating Officer obtained Call details record of mobile numbers of co-accused Raju Bairagi, Tek Singh (petitioner-accused) and co-accused Jai Bhagwan and on perusal of the Call details record, there are several conversations of co-accused Raju Bairagi with mobile number 7869417023 on which, production warrants of co-accused Raju Bairagi and Kamla Bai obtained and on 18.06.2024, co-accused Kamla Bai again joined the investigation. On 18.06.2024, co-accused Raju Bairagi again joined the investigation and he also suffered disclosure statement dated 18.06.2024 wherein he disclosed the name of Vinod Sharma (co-accused) instead the name of Nathu Lal alias Babu and also disclosed the name of Bagdi Bai alias Bhagti. He also disclosed that he also made conversation for purchasing of narcotic substance with co-accuseo Vinod on his mobile number 9098293061.”*

REASONING:

9. Perusal of the reply clearly points out the involvement of the petitioner through call details, however the fact remains that the evidence is based on disclosure statement and regarding call details, the prosecution's case is that the petitioner had intended to purchase and had demanded 1 kg 100 gms of opium from Raju Bairagi. Thus, even if petitioner had demanded opium, there is no evidence that he had already paid advance, as such possibility cannot be ruled out that he might have changed his mind about purchasing the opium. The contract would have completed either when petitioner had paid advance or had accepted the consignment either directly or through somebody or by directing the seller to keep it an appropriate place or send it by a particular medium which is not the case. Even otherwise, the evidence against petitioner is of demand of 01 kg of opium which falls under intermediate quantity.

10. 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.

11. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court

must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[31]. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

12. It would be appropriate to refer to the evidence collected against the petitioner, which is taken from the status report, which reads as follows:

“(A). ROLE & CULPABILITY OF PETITIONER:-

(i) That on 04.06.2024, on the basis of secret information, co-accused Sunil Kumar, Lalita Devi, Kamla Bai and Raju Bairagi were arrested and 2.654 Kg. Opium was recovered from them. As per disclosure statement (Annexure R-1) of co-accused Raju Bairagi, out of recovered opium, 1 Kg. Opium had to be supplied to Tek Singh (petitioner-accused) and 1.650 Kg. Opium was to be supplied to Jai Bhagwan (co-accused).

(ii) Name of petitioner-accused Tek Singh was specifically disclosed by co-accused Raju Bairagi in his disclosure statement (Annexure R-1).”

13. Thus, the evidence collected so far consists of disclosure statements. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of BSA, 2023.

14. In Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

15. The status report filed by the police reveals that the investigator arraigned the

petitioner as an accused based on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband. No other evidence is collected at this stage to connect the petitioner with the main accused. Thus, there is no justification to deny bail. Consequently, the petitioner has satisfied the first rider of section 37 of the NDPS Act. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

16. As per paragraph 10 of the bail petition, the petitioner has been in custody since 12.09.2024. 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.

17. 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.

18. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, it is insufficient for denying bail.

19. Given the penal provisions invoked, the legal admissibility of evidence collected against the petition, 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.

20. Without commenting on the case's merits, in the facts and circumstances unique and peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

CONDITIONS:

21. 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.

22. 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)	
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23. This order is subject to the petitioner's complying with the following terms.

24. 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.

25. Given the background of allegations against the petitioner, it becomes paramount to protect the detection squad, members of society, 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.

26. 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."

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

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

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

30. 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.

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

(ANOOP CHITKARA)
JUDGE

23.04.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: NO.