



CRM-M-55665-2024
209

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

CRM-M-55665-2024
Decided on: 01.04.2025

Balwinder Singh @ Binda

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Hitesh Chopra, Advocate (Through VC)
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0051	18.09.2024	Narot Jaimal Singh, District Pathankot	3, 4 of Official Secrets Act 1923 and 10,11,12 of Aircraft Act 1934 and 21 of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above had come up before this Court under Section 438 CrPC, seeking anticipatory bail.
2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply dated 20.11.2024, which reads as under:-

“That initially the co-accused Akhil Sharma @ Babla was arrested in FIR No. 50 dated 15.09.2024 under section 303(2), 317(2), 345(3), 238 of BNS 2023. During his custodial interrogation on 18.09.2024, he had made a disclosure statement that Sukhdeep Singh @Ghudda R/o Village Radiana, Police Station Kalanaur, District Gurdaspur (Punjab) is his friend and about 5-6 months back, Sukhdeep Singh @Ghudda had through internet calling contacted him and asked him to send a letter (over here letter means 'Location'). Then Sukhdeep Singh @Ghudda further said him (Akhil Sharma @ Babla) that he will send heroin packets from Pakistan to



CRM-M-55665-2024

the place/location which he will send him through mobile and his boys will collect Heroin from him. About Three months back, he had smuggled Heroin on three locations sent by Sukhdeep Singh @Ghudda and 4th time due to high electric towers, the signal of Drones failed because of which delivery remained unsuccessful. The Heroin Packets were collected by Harjeet Singh @Jeeta S/o Gurmej Singh along with one unidentified person and who used to tears the packets from one side in which there was Heroin and he had no information/knowledge about the contents of second packet. They used to send the amount/ drug money in the account of Gaurav Sharma @Gopi R/o Pansar, Police Station Rajbagh, District Kathua (J&K) and he used to collect the amount as per his needs. About 14-15 days back, Balwinder Singh @Bhinda (petitioner) R/o Magarmudian, District Gurdaspur and Cheena R/o Taran Tarn, who were friends of Sukhdeep Singh @Ghudda came to him and took him to Village Bhagwal and they sent location to Sukhdeep Singh @Ghudda. Then about 11:00 pm (in night) on the said day, all three of them i.e. Petitioner & two others went to place of location where Drone arrived from Pakistan siae, but due to dense cover of trees, the signal of Drone break down and the Drone returned back without dropping Heroin. That 6 time when Sukhdeep Singh @Ghudda sent the location of cremation ground of his village and asked him to provide some amount of Heroin to him. Firstly Sukhdeep Singh @Ghudda refused but lateron agreed to provide him some heroin out of the said consignment. Then 9-10 days prior, Sukhdeep Singh @Ghudda sent location of Cremation Ground adjoining to his village, then about 02:00 am (in night) the consignment of Heroin dropped by a Drone arrived from the Pakistan side, which were collected by two boys sent by Sukhdeep Singh @Ghudda, who came there on Splendor Motorcycle. The said 2 persons gave some Heroin to him and they went back on their motor cycle with the said Heroin. That Akhil Sharma @ Babla further disclosed that he had kept the Heroin in his fields. That on 18.09.2024, the said Heroin was recovered from the fields of Akhil Sharma @ Babla. Thereafter the present FIR No. 51 dated 18.09.2024 under section 3,4 of official secrets Act 1923, 10, 11,12 of Aircraft Act 1934, 21, 27-A of NDPS Act & 303(2), 317(2) of BNS was registered by the Police Station Narot Jaimal Singh against the present petitioner (Balwinder Singh @Bhinda), Akhil Sharma @ Babla, Sukl.deep Singh @Ghudda, Harjeet Singh @Jeeta, Gaurav Sharma @Gopi & Cheena. Vide Rapat No. 30 dated 20.09.2024, Lovepreet Singh @ Lovely & Sahil



CRM-M-55665-2024

Saini were also nominated as co-accused in the present FIR.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. State counsel opposes the bail.

6. On 27.01.2025, petitioner was directed to join investigation and State was asked to file fresh status report. In compliance to that order, state has filed fresh status report dated 17.03.2025.

7. It would be appropriate to refer to the following portions of the status report dated 17.03.2025, which read as follows:

“D. Call details:-

That during the investigation the petitioner/accused was asked to provide all his mobile numbers, which was/is being operated by him. The petitioner replied that he has operated only two mobiles numbers i.e. 73475-34413 & 73407-67302 till date. As per the Call details of the mobile no. 73475-34413 of petitioner, it is found that about 14-15 days prior to the arrest of main accused Akhil Sharma @Babla, the petitioner Balwinder Singh @Bhinda contacted with the co-accused Cheena, Sukhdeep Singh @ Ghudda & Akhil Sharma @ Babla through WhatsApp Calls and exchanged Locations between them where Drone arrived from Pakistan side for dropping the consignment of Heroin. Lateron the said Heroin was recovered from the fields of Akhil Sharma @ Babla on 18.09.2024. It is worth mentioning here that WhatsApp calls are end-to-end encrypted, which means that only the caller and recipient can read or hear them. This includes voice messages, photos, videos, and status updates. Therefore the Call details of WhatsApp calls can only be retrieved from the mobile devices from where WhatsApp Call is dialed or received.

E Mobile location :-

The petitioner was asked about the whereabouts of the mobile phones in which the said Mobile SIM were used by him. The petitioner replied that he had used the said SIM in "Apple iPhone 11" & "Oppo F9 Pro", but now he had throw the "Apple iPhone 11" and he has further given the "Oppo F9 Pro" mobile to some other person about whom he does not know



CRM-M-55665-2024

anything. The Petitioner further replied that at present he has no mobile number and he is not using any Mobile SIM. However about 14-15 days prior to the arrest of main accused Akhil Sharma @ Babla, the Location of mobile number 73475-34413 of petitioner was found to be at Village Bhagwal and surrounding Border areas.

F. Additional connections with co-accused :-

The petitioner was asked "how and when he came in contact with co-accused Akhil Sharma @Babla?" The petitioner replied that he was working at "Lovely Financiers, Adda Fatehpur, District Pathankot and he was residing near the Adda Fatehpur". The Co-accused Akhil Sharma @Babla used to visit Adda Fatehpur and in this way he came into the contact with co-accused Akhil Sharma @Babla in the month of April 2024. The petitioner further disclosed that he has no family relations with Akhil Sharma @Babla and he is just familiar with him.

x x x x

K. Any other evidence :-

That on the disclosure statement dated 18.09.2024 made by Akhil Sharma @ Babla, the name of present petitioner Balwinder Singh @Bhinda is arrayed in the present FIR. That 260 gram of Heroin and Drug Money of Rs. 2,18,000/- (Rs. 15,000/- + Rs. 2,03,000/-) has also been recovered from Akhil Sharma @ Babla. That the mobile phones of Akhil Sharma @ Babla & Harjeet Singh @Jeeta have sent to Forensic Lab for further Examination. That the raids are being conducted to arrest the petitioner in the present FIR in order to enquire about his Role. Further as per the investigation till date, the petitioner is found to be the member of Drug Nexus who smuggled the Heroin from the Pakistan by using Drones and their links are connected with District Gurdaspur, Batala, Amritsar, Taran Tarn, Jammu & Kashmir etc. Therefore custodial interrogation of the petitioner is required to enquire about his Role in the Drug Nexus and also in order to recover the Drones, mobile devices, SIMs, bank accounts etc so that the links between this Drug Nexus may be broken. It is pertinent to mention here that the offence committed by the petitioner in the present FIR are very serious in nature, therefore, the petitioner should not be released on bail."

REASONING:

8. Given the above, the petitioner has, prima facie, failed to satisfy the conditions of



CRM-M-55665-2024

section 37 of the NDPS Act to make a case for bail.

9. 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.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

- (a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [*Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Para 6].
- (b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [*Customs, New Delhi v. AhmadalievaNodira*, (2004) 3 SCC 549, Para 7].
- (c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [*UOI v. Prateek Shukla*, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].
- (d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [*Union of India v. Niyazuddin SK &Anr*, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].
- (e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [*N.R. Mon v. Md. Nasimuddin*, (2008) 6 SCC 721, Para 9].
- (f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [*Customs, New Delhi v. Ahmadalieva Nodira*, (2004) 3 SCC 549, Para 7].



CRM-M-55665-2024

(g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].



CRM-M-55665-2024

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[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.

10. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

12. **Petition dismissed.** Interim orders are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

01.04.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.