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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3954-2025

DATE OF DECISION: 11.03.2025

JASPAL SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nitin Sachdeva, Advocate
Legal Aid Counsel, for the petitioner(s).
Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 483 of B.N.S.S., 2023, for grant of regular bail to the petitioner in FIR No. 0012 Dated 15.03.2023 (Annexure P-1), Under Section 21, 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Under Section 379 & 411 of IPC, 1860 registered at Police Station: Thulliwal, District Barnala.

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

'Copy Officer Incharge, Police Station Thulliwal, Fateh, Today I SI/SHO along with Jagtar Singh 930, Sr. Constable Lovepreet Singh 873, Lady Constable Ninder Kaur 1029 on government vehicle no. PB-13BA-1834 being driven by ASI Daya Singh 713 in connection with patrolling and checking of suspected persons were present near Gurughar Bus Stand, Hamidi then time was about 01:45 PM. Then secret informer gave Information to me secretly that Jaspal Singh son of Harjit Singh resident of Dharamkot, Gurmukh Singh son of Lakhvir



Singh, Rinku son of Ujagar Singh, residents of Bhinder Kalan, Raghu Kabaria and Ravi Kabaria residents of Dharamkot have formed a gang of their own who are stealing vehicles and doing business of selling intoxicant on their vehicle Bolero Camper white colour bearing No. PB 30 N 4465. Today also they have been seen while selling intoxicant at Amla Singh Wala Drain. If their search be conducted at drain then they can be apprehended red handed. I alongwith fellow companions reached at Bridge drain Amla Singh Wala on finding the information solid and reliable, then time was about 02:10 PM that above numbered car was parked on the road under the tree placed on path at right side towards the Amla Singh wala drain at 20 meters away. The vehicle was facing towards the road and there were three young boys were searching the transparent polythene bag placed on bonnet. On seeing the vehicle of police party slow down they tried to ran after leaving the polythene bag on the bonnet of the car and then three young persons were apprehended by the help of fellow companions and asked their name and address, then first young boy disclosed his name as Jaspal Singh son of Harjit Singh, resident of Dharamkot, second young boy disclosed his name Gurmukh Singh son of LakhvirSingh and third young boy disclosed his name as Rinku son of Ujagar Singh residents of Bhinder Kalan. Then I tried to join public witness from nearby and asked the passerby to join as witness but everyone by showing their helplessness left the spot. Therefore no one made as witness. Then I introduced myself to apprehended Jaspal Singh above that "I am Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwal as Station House Officer, I am wearing the uniform as per my rank and name plate in my name affixed. I have clearly seen the intoxicant substance heroin in the open mouth transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in police possession by checking it. But you have legal right that if you want to get search of the transparent polythene



bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Jaspal Singh above told me that, "I have listened and understand you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen". On which notice under section 50 of NDPS Act and consent memo of Jaspal Singh above was prepared. Accused and witnesses put their signatures. Then I introduced myself to apprehend Rinku above that, "I Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwal as Station House Officer, I am wearing the uniform as per my rank and name plate in my name affixed. I have clearly seen the intoxicant substance heroin in the open mouth transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in police possession by checking it. But you have legal right that if you want to get search of the transparent polythene bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Rinku above told me that, "I have listened and understand to you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen". On which notice under section 50 of NDPS Act and consent memo of Rinku above was prepared. Accused and witnesses put their signatures. Then I introduced myself to apprehend Gurmukh Singh above that "I Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwal as Station House Officer, I am wearing the uniform as per my rank and name plate in my name affixed. I have clearly seen the



intoxicant substance heroin in the open mouth transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in police possession by checking it. But you have legal right that if you want to get search of the transparent polythene bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Gurmukh Singh above told me that, "I have listened and understand to you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen". On which notice under section 50 of NDPS Act and consent memo of Gurmukh Singh above was prepared. Accused and witnesses put their signatures. Then I SI/ SHO checked the opened mouth transparent polythene bag seen left at the bonnet of the car by Jaspal Singh, Rinku and Gurmukh Singh from which intoxicant substance heroin is clearly, on checking and weighing 290 grams of intoxicant substance heroin alongwith bag was found. Parcel of above recovered intoxicant substance heroin was prepared. Then I SI/ SHO sealed the above parcel with my seal bearing SS and sample seal was prepared separately. Then I SI/SHO conducted the search of above vehicle from which no illegal item and documents regarding ownership was found. Seal after use was handed over to SI Jagtar Singh 930. Then I SI/SHO taken the above sealed parcel sealed alongwith sample seal and above vehicle into police possession vide separate recovery memo. Then I SI/ SHO inspected the spot and prepared the site plan separately. Then I SI/SHO arrested the accused in above FIR prepared the arrest memo separately. On which accused and witnesses put their signatures. Then I SI/SHO conducted the personal search of Jaspal Singh, Gurmukh Singh and Rinku above then from the right pocket of wearing pant of Jaspal Singh



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one white colour keypad mobile phone mark Samsung and currency notes of Rupees 300, from the left pocket of wearing lower of Gurmukh Singh one black coloured keypad mobile phone marka ITEL and currency notes of Rupees 150 and front pocket of wearing shirt of Rinku currency note of Rupees 100 were recovered, to whom taken into police possession vide separate personal search memo. Personal search memo prepared separately, on which accused and witnesses put their signatures. Jaspal Singh, Gurmukh Singh and Rinku above have committed the offence under section 21/25/61/85 of NDPS Act by keeping Intoxicant substance heroin in their possession and committed offence under section 379 of IPC for committing theft by forming gang. Therefore, ruqa is being sent to police station through Lady Constable Ninder Kaur 1029 for registration of FIR under abovesaid offences against above accused Jaspal Singh, Gurmukh Singh and Rinku. Number be intimated after registration of FIR. I SI/SHO alongwith fellow companions are busy in the investigation at the spot. Today at bridge drain Amla Singh Wala at 6 PM, Sd/-Sukhwinder Singh'.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and has not committed any offence as alleged in the FIR. He further submits that the samples were not drawn in the presence of the Magistrate and no independent witness was joined in the investigation. He has argued that the recovery of one mobile handset has been shown to be effected from the petitioner and at the time of alleged arrest. He contends that the petitioner has been in custody since 15.03.2023 and the trial is moving very slow, therefore, prays for grant of regular bail to the petitioner.



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On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year, 11 months and 15 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that Heroin weighing 290 grams has been recovered from the petitioner along with co-accused persons which is commercial in nature and upon being interrogated suffered a disclosure statement that 20 litres of transformer oil was stolen and subsequently, it was recovered from the disclosed place. He further submits that the petitioner is a habitual offender as he is involved in many other FIRs, therefore, prays for dismissal of the petition.

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.

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 290 grams of heroin stands recovered, from the possession of the petitioner and co-accused. 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 and which is sufficient for this Court to infer that the petitioner has actively indulged himself in business of selling Narcotic Substances.

Based on the aforementioned facts, the court can reasonably conclude that the petitioner is involved in illegal drug trade. 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. **Relief**

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.

(SANDEEP MOUDGIL)
JUDGE

11.03.2025
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>