



CRM-M-51218-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51218-2024
Reserved on: 13.11.2024
Pronounced on: 29.11.2024

Jogindro Bai ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sudhir Rana, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
11	09.01.2024	Model Town, Rewari, Distt. Rewari	20(a) & 29 of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. In paragraph 11 of the bail petition, the petitioner declares as follows:

“11. That as per the instructions of the petitioner she was involved in three criminal cases, one under NDPS act and 2 under Exise Act, all the three cases have been disposed of and no other criminal case is pending, against the petitioner, the details of all the three cases is not available with the petitioner.”

3. Para 9 of the reply mentions the petitioner’s following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	637	2023	14, 19/54 of Excise Act	Bhiwadi (Raj.)
2	662	2018	19/54 of Excise Act	Bhiwadi (Raj.)
3	678	2023	8/20 of NDPS Act	Bhiwadi (Raj.)
4	114	11.07.2023	21A, 27A-61-85 of NDPS Act	Sector-6, Dharuhera

4. The facts and allegations are taken from the reply filed by the State. On Jan 09, 2024, based on secret information, the Police seized 2.28 grams of heroin from one Fateh



CRM-M-51218-2024

Singh's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

5. During custodial interrogation, the main accused, Fateh Singh, confessed before the Police officer that they had purchased the drugs from one Heena. Based on such confession before the police, Heena was arraigned as an accused and arrested. Heena was searched, which led to the recovery of 1.17 grams of Smack (heroin) and Rs 800/- in cash.

6. During custodial interrogation, Henna confessed before the Police officer that they had purchased the drugs from the petitioner, Jogindra Bai. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, she filed for anticipatory bail from the Sessions Court, which most surprisingly and strangely denied her the bail. Feeling aggrieved, she has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023. Ld. Additional Sessions Judge denied her bail on the following reasoning:

“6. After hearing both the sides and considering their arguments and the material available on record, as per allegations levelled, the applicant-accused is involved in the sale of Narcotic drugs. The applicant-accused is involved in three more criminal cases, one case under NDPS Act and two cases under Excise Act. The offence alleged against applicant-accused is serious in nature and the custodial interrogation of applicant-accused may be required by police regarding her role in the allegations against her and the interrogation of applicant-accused clothed with protective shield of anticipatory bail would not be much effective. Hence, without commenting on the merits of the case and in the facts and circumstances of the case, no extraordinary circumstances exist to exercise the discretionary relief of pre-arrest bail in favour of applicant-accused. Hence, application of applicant-accused is hereby dismissed.”

7. 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.

8. The State's counsel opposes bail and refers to the reply.

9. It would be appropriate to refer to the following portions of the reply, which read as follows:

“[5]. That the accused Fateh Singh was arrested upon receipt of appropriate incriminating evidence against him for having committed offence punishable under Section 21 of the NDPS Act. He was informed of



CRM-M-51218-2024

the grounds of his arrest but he refused to sign the arrest memo.

That the arrested accused was interrogated while being in custody and upon interrogation he suffered his disclosure statement disclosing therein the complicit of the Heena w/o Rohit, resident of Mohalla Khasapura, PS City Rewari and apprised the investigating agency that he used to procure smack (heroin) from her and they both used to sell it together. He further disclosed that Heena had given him a packet of smack for selling purposes.

[7]. That during the course of further investigation accused Heena was joined in investigation of the case. The Duty Magistrate was called at the spot. In the presence of the Duty Magistrate, accused Heena was searched during which a total of 8 silver foil packets containing smack weighing 1.17 grams and Rs.800/-, suspected to be the sale proceeds of smack were recovered from her possession. The smack were taken into police custody. Section 29 of NDPS Act was added to the case. Accused Heena was arrested upon receipt of appropriate incriminating evidence against her and was interrogated while being in custody and upon interrogation she suffered her disclosure statement disclosing therein that she used to procure the smack from Jogindro alias Punjaban (petitioner herein) and they used to sell it. Notice under Sections 55/57 NDPS Act was duly served upon her.”

10. Dealing in 3.45 grams (2.28 + 1.17) of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	3.45 Gram
Quantity type	Small
Drug Quantity in % to upper limit of Intermediate	1.38%

Specified as small & Commercial in S.2(viia) & 2(xxiia) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	56
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin
Other non-proprietary name	*****
Chemical Name	Diacetylmorphine
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii)



CRM-M-51218-2024

NDPS Act, 1985	
Notification No	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	11/14/1985
Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

11. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.
12. Section 2 (vii-a) of the NDPS Act defines commercial quantity as greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.
13. In Sami Ullaha v Superintendent Narcotic Control Bureau, (2008) 16 SCC 471, the Hon’ble Supreme Court holds that in intermediate quantity, the rigors of the



CRM-M-51218-2024

provisions of Section 37 may not be justified.

14. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

15. The Police rightly did not arrest the petitioner because there was no need for custodial interrogation; if they intended to arrest the petitioner, it was not impossible. Probably for this reason, a perusal of the reply does not point out the steps taken to arrest the accused.

16. The case pertains to possession of an amount of substance whose weight is less than the weight categorized as a "small quantity" under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), a classification indicative of the lesser gravity of the offense. The offenses involving such quantities are triable by the Magistrates. In the present instance, the petitioner was denied bail for possessing 3.45 grams (2.28 + 1.17) of heroin, a quantity representing only 1.38% of the upper threshold for the intermediate category, owing to her prior criminal antecedents, notwithstanding the insignificance of the quantity in question, which is demonstrably minor.

17. Adjudicating a bail petition of an accused with a prior criminal record places a significant and exacting responsibility on courts to exercise judicial discretion in a manner that is both reasoned balanced to consider the countervailing impacts on the freedom of an accused and that of society and free from arbitrariness, as arbitrariness is antithetical to the rule of law. As a natural corollary, consideration of an accused's criminal history should be limited to cases where convictions have been secured, including those resulting in suspended sentences, and all pending First Information Reports (FIRs) in which the petitioner is formally arraigned as an accused. However, cases that culminated in acquittals, discharges, quashed FIRs, withdrawals of prosecution, or the filing of closure reports by the investigative authorities must be excluded.

18. Although the legal system upholds the principle that crime, not the individual, should be condemned, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles, and a recidivist often operates on precarious ground, where the weight of a significant criminal record creates an increasingly challenging terrain. Nonetheless, where the offense for which bail is sought is minor, such that arrest is generally unwarranted, or bail would ordinarily be inevitable, courts must not deny bail solely as a punitive measure intended to serve as a pre-trial deterrent. Such an approach contravenes the judiciary's obligation to uphold the foundational principles of justice and equity in bail proceedings.



CRM-M-51218-2024

19. Given the above, the penal provisions invoked 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 custodial interrogation or the pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order. 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 anticipatory bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

20. 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 Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

21. 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)	

22. The bail order is subject to the petitioner's complying with the following terms.

23. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

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. In case the Investigator/Officer-In-Charge of the concerned Police Station



CRM-M-51218-2024

arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

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

27. 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.

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

(ANOOP CHITKARA)
JUDGE

29.11.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.