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CRM-M-58066-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58066-2024
Reserved on: 02.12.2024
Pronounced on: 17.12.2024

Yogendra ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ajay Ghangas, Advocate for the petitioner.

Mr. Rajat Gautam, Addl. A.G. Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
256	11.08.2024	Pataudi, Gurugram	21 (b) and 29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 483 of BNSS, 2023, seeking regular bail.

2. As per paragraph 17 of the bail petition and as per paragraph 9 of reply filed to the bail petition, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses under Sections	Police Station
1.	104	23.03.2016	379, 427 IPC	Pataudi, Distt. Gurugram
2.	113	28.03.2016	365, 381 IPC	Pataudi, Distt. Gurugram
3.	418	16.09.2017	120-B, 380, 414 IPC	Pataudi, Distt. Gurugram
4.	71	02.03.2019	The Excise Act	Pataudi, Distt. Gurugram
5.	101	11.03.2021	395, 397 IPC	Pataudi, Distt. Gurugram
6.	127	02.03.2022	61 of Excise Act	Pataudi, Distt. Gurugram
7.	691	26.12.2023	21-A of NDPS Act	Pataudi, Distt. Gurugram

3. The facts and allegations are taken from the reply filed by the State. On Aug 09, 2024, based on secret information, the Police seized 9.72 grams of heroin from Mohit and 8.16 grams of heroin from Ankit's possession, who were present in a farm taken on lease by the petitioner. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.

4. The petitioner's counsel prays for bail by imposing any stringent conditions and



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contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

5. The State’s counsel opposes bail and refers to the reply.
6. The total quantity recovered from both accused was 17.88 grams (9.72+8.16) of heroin/Chitta.
7. Dealing in 17.88 grams of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta
Quantity detained	17.88 Gram
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	7.15%

Specified as small & Commercial in S.2(viia) & 2(xxiii) 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) 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



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	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.
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8. Given the above, the rigors of S. 37 of the NDPS Act do not apply in the present case.
9. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity 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 offense 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 offenses under the regular statutes.
10. 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 provisions of Section 37 may not be justified.
11. The quantity of total heroin falls in the intermediate category, which is much less than commercial and just 7.15% of the upper limit of the Intermediate.
12. As per para 5 of the reply, the petitioner was arrested on 11-08-2024.
13. Ld. Additional Sessions Judge Gurugram, vide orders dated 29-08-2024, 21-10-24, and 13-11-24, dismissed the petitioner’s regular bail petitions; however, the approach



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was fully justice-oriented in granting bail to the main accused, Ankit, who got bail on 04.11.2024, and Mohit, who got bail on 05.11.2024. Although the reasons for dismissing all the bails of the petitioner Yogendra were identical, it would be relevant to extract the reasons given while rejecting the last bail petition on 13.11.2024, which read as follows:

“(6). Having due regards to the rival contentions and facts on record, without commenting on the merits of the case, this Court is of the considered opinion that though the Narcotic substance recovered from the place owned by applicant-accused is of medium quantity but the matter of fact is that seven more cases are pending, some of which are of serious nature of offences, and thus it shows that his antecedents are not clean. There is every likelihood that the accused may temper with the investigation if he be released on bail.

(7). The contention of counsel for the applicant that he is in custody since long is not an ipso facto ground to grant bail.”

14. In *Maulana Mohd Amir Rashadi v. State of U.P.*, (2012) 3 SCC 382, the Hon’ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

15. Adjudicating a bail petition of an accused with a prior criminal record places a significantly exacting responsibility on courts to exercise judicial discretion in a manner that is both reasonably balanced to consider the countervailing impacts on the freedom of an accused and that of society and is also 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.

16. Although the legal systems uphold the principle that crime, and not the individual, should be condemned, for a habitual offender, 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



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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. The pre-trial incarceration cannot be a replica of post-conviction sentencing. Such an approach contravenes the judiciary's obligation to uphold the foundational principles of justice and equity in bail proceedings.

17. In the present case, the Police recovered 9.72 grams and 8.16 grams of heroin from the possession of the co-accused individuals, who were allegedly located on the farm leased by the petitioner, as per secret information received by the authorities. However, no recovery of narcotics was made from the petitioner. Despite this, the Ld. Additional Sessions Judge dismissed three regular bail petitions filed by the present petitioner, primarily relying on the petitioner's antecedents.

18. The Hon'ble Judge did not adequately consider the probative legal value of the evidence, the relatively lesser quantities involved (falling considerably lower than commercial thresholds), the petitioner's extended custody, and the lack of causal nexus between the prior conduct and present allegations. The case against the petitioner rests on tenuous grounds, with little substantive evidence implicating the alleged offense and recovery solely from the co-accused individuals.

19. While considering bail for the penal offenses of the NDPS Act, 1985, where the drug quantity falls in intermediate and small categories, and thus, does not fall in the commercial category, and consequently, the legislative rigors of S. 37 do not attract, the bails have to be considered like any general offenses because the Legislature has already created highly stringent conditions to get bail extremely difficult when the quantity is commercial and the accusations are of financing of the drugs, etc.

20. Bails deal with pre-trial curtailment of liberty on unilateral allegations demanding paramount priority in judicial adjudication. However, trial courts, even in matters where bail should ordinarily be the norm, often exhibit hesitation or reluctance in granting bail, and in all probabilities, they cannot be entirely blamed for this harsh approach. It would always be better to err on the side of liberty. It is for us, the hierarchical court, to introspect. Such reluctance exacerbates the burden on High Courts, where the influx of bail applications significantly delays the adjudication before single benches, i.e., the statutory criminal appeals, revisions, and petitions for quashing. The legal professionals are happy to surf over the underlying fault lines, and the Bar is oblivious to the after-effects. It creates a domino effect, depriving the lawyers of



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essential experience in the criminal field of law, and Justice is the likely casualty of this cascade. The repercussions are particularly severe under Sections 528, 348, and 358 of the BNSS, 2023 (analogous to Sections 482, 311, and 319 of the CrPC, 1973), which might affect investigations and even stagnate the criminal trials. Despite this judicial paralysis, these cases remain classified as pending or in arrears in the National Judicial Data Grid (NJDG), unjustly blaming the trial courts for the delays, which are beyond their control. Such systemic inefficiencies create an environment where those employing delay tactics through vexatious litigation or procedural abuse gain undue advantage, undermining the very fabric of criminal justice administration. Those who bully bear the brunt?

21. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act¹.

22. Per paragraph 5 of the reply filed to the bail petition, the petitioner was arrested on 11-08-2024. Applying the general principles for bail, coupled with the sketchy evidence, the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability of further pre-trial incarceration.

23. 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 bail. This order shall come into force from the time it is uploaded on the official webpage of this Court.

24. 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.

25. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

¹Hon'ble Supreme Court of India, in Rabi Prakash v. The State of Odisha, SLP (CrI) 4169-2023, Para 4, decided on 13 July 2023



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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)	

26. 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.

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

28. 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.

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

(ANOOP CHITKARA)
JUDGE

17.12.2024
Jyoti-II/Anju

Whether speaking/reasoned: Yes
Whether reportable: YES