
Manjit Kaur Alias Soni Vs State Of Punjab

Criminal Miscellaneous Petition (M) No. 52744 Of 2021

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 13, 2022

Acts Referred:

Constitution Of India, 1950 " Article 15#Code Of Criminal Procedure, 1973 " Section 437, 437A, 439, 446#Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 37, 67

Hon'ble Judges: Anoop Chitkara, J

Bench: Single Bench

Advocate: Shreya Rana, Vijay Rana, Jashandeep Singh

Final Decision: Allowed

Judgement

FIR No.,Dated,Police Station,Sections

34,04.04.2021,"Sadar Phagwara, Distt.

Kapurthala","22 of NDPS Act, 1985

provisions of the CrPC or any other enactment. [Union of India v. Niyazuddin&Anr, (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. AhmadalievaNodira, (2004) 3 SCC",,,

549, Para 7].",,,

(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, AIR 2020 SC 721, Para 21].",,,

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. AhmadalievaNodira, (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) 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, (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 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 SCC OnLine SC 47,"",,,

Para 12].",,,

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, 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.,,,

11. 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",,,

offence.,,,

12. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can",,,

be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that",,,

unusually, subject to the evidence produced, the Courts can impose restrictive conditions.",,,

13. 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, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail",,,

bonds in chapter XXXIII of CrPC, 1973.",,,

14. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], "",,,

this Court observed," "",,,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the",,,

accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a",,,

lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose,,,

between the sureties and deposits and not with the Court or the arresting officer.,,,

15. Given above, provided the accused is not required in any other case, the petitioner shall be released on bail in the FIR mentioned above, subject to",,,

furnishing a personal bond of Rs. Ten thousand (INR 10,000/-) and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the",,,

satisfaction of the concerned Court/ Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-",,,

availability, any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that if the accused fails to",,,

appear in Court, then such surety is capable of producing the petitioner before the Court.",,,

16. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the concerned court a",,,

fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposit",,,

may be made from any of the banks where the stake of the State is more than 50%, or any of the well-established and stable private banks, with the",,,

clause of automatic renewal of the principal and the interest reverting to the linked account.,,,

17. The fixed deposit need not necessarily be made from the applicant's account. If such a fixed deposit is made in physical form, i.e., on paper, then",,,

the original receipt shall be handed over to the concerned court. If made online, its printout, countersigned by the accused, shall be given; and the",,,

depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest that it has been tendered",,,

as surety. Such information be sent either by e-mail or by post/courier about the fixed deposit, whether made on paper or in any other mode, along",,,

with its number and FIR number. After that, the applicant shall hand over such proof and endorsement to the concerned police station. Such court",,,

shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A",,,

CrPC, 1973, as the case may be. Subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes, if any, shall be",,,

endorsed/returned to the depositor.,,,

18. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply to,,,

the investigator or the concerned court to substitute fixed deposit with surety bonds and vice-versa.,,,

19. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner along with the phone number",,,

linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner",,,

shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned",,,

Court.,,,

20. The petitioner to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond",,,

shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.",,,

21. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the police",,,

officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the police, or",,,

the court, or to tamper with the evidence.",,,

22. Within fifteen days of release from prison, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O.",,,

of the Police station mentioned above. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating,,

officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, call",,,

logs nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case,",,,

whichever is earlier.,,,

23. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms",,,

ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator",,,

about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in",,,

this case, provided otherwise permissible in the concerned rules.",,,

24. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates",,,

any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for",,,

any investigating agency to bring it to the notice of the court seized of the subsequent application that the accused was earlier cautioned not to indulge",,,

in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled",,,

due to non-appearance or breach of conditions.,,,

25. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of,,,

the society. In Mohammed Zubair v. State of NCT of Delhi, 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."

26. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of,,,

this bail order in any language that the petitioner understands.,,,

27. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction.",,,

Further, if the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for",,,

modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking",,,

cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.",,,

28. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.",,,

29. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the",,,

new section prescribes maximum sentence which 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.,,,

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

31. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior." ,,,

32. There would be no need for a certified copy of this order 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. In case the attesting officer wants to ,,,

verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds." ,,,

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed." ,,,