



CRM-M-48691-2024

2024:PHHC:136520

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

**236****CRM-M-48691-2024****Decided on: 18.10.2024**

Parveen @ Raman

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA**

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

Mr. Jasjit Singh, DAG, Punjab.

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**ANOOP CHITKARA, J.**

<b>FIR No.</b>	<b>Dated</b>	<b>Police Station</b>	<b>Sections</b>
216	04.08.2024	Phillaur, District Jalandhar Rural	21-B & 27 A of NDPS Act (Sections 61, 85 of NDPS Act added later on)

1. A mother of three daughters, aged 4, 2, &1, incarcerated in the FIR captioned above, since 4<sup>th</sup> August 2024 for possessing 12 grams of heroin, just 4.8% of the maximum intermediate quantity, and Rs. 10,000/- termed as drug money by the Police, without any prima facie evidence to such an extent, and to her extreme misfortune, despite all this, denied bail by worthy Special Judge, has come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. In paragraph 18 of the bail petition, the accused declares that she has no criminal antecedents.

3. The facts and allegations are taken from the reply filed by the State. On Aug 04, 2024, based on a chance recovery, the Police seized 12 grams of heroin from the petitioner's possession. In addition to the heroin, the police also recovered Rs. 10,000/- from her purse, which the police termed as drug money, and based on such self-declaration, inserted S. 27-A along with S. 21 of the NDPS Act. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.



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4. 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.

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

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

*3. That FIR No. 216 dated 04.08.2024 U/s 21(B), 27(A) of NDPS Act, 1985 was registered at Police Station: Phillaur, Jalandhar Rural on the basis of a chance recovery of 12 grams of heroin effected by SI Satnam Singh and fellow police officials from the petitioner Parveen @Raman. The brief facts of the case are as follows:*

*i. On 04.08.2024, SI Satnam Singh along with fellow police officials were going from Phillaur towards Gannapind in connection with patrolling and checking of bad elements. When the police officials reached near Gannapind Village, one lady carrying a polythene bag in her right hand was seen coming out of her house. On seeing the police officials, she suddenly turned towards her house but she was apprehended by police officials.*

*ii. On enquiry, the apprehended lady disclosed her name as Parveen @ Raman (petitioner). Before conducting search of the polythene bag, an effort was made to join independent witnesses but no one came forward to join the police party.*

*iii. On searching the polythene bag, a smaller polythene bag was found inside the main bag and from the said smaller bag, heroin was recovered. On weighing the polythene bag along with the heroin on computerized scale, the weight came to be 12 grams. The recovered contraband was put into a plastic box and a parcel was prepared upon which SI Satnam Singh put his seal 'SS'. Furthermore, the petitioner was also carrying a purse from which Rs. 10,000/- drug money was recovered and taken into police possession. Thereafter, form M-29 was prepared. A ruqa was sent to the Police Station through ASI Jai Gurpal and instant case FIR was registered against the petitioner.*

7. Dealing in 12 grams of heroin is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	12 Gram
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	4.80%



<i>Specified as small &amp; Commercial in S.2(viia) &amp; 2(xxiii) NDPS Act, 1985</i>	
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	<p>2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts;</p> <p>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:</p> <p>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.</p>

8. Given this, the rigors of S. 37 of the NDPS Act do not apply regarding recovery of heroin.

9. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity



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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.

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. However, the police claim that in addition to the heroin, the police had also recovered Rs. 10,000/-. To understand the facts that led to the recovery of money, it shall be relevant to read FIR, whose translated copy is annexed with the bail petition as Annexure P-1, and the applicable portion reads as follows:

*“xxxxAfter that I, alongwith other police officials present there conducted search of the polythene bag which Praveen @ Raman was carrying in her hand, on checking it revealed to be containing a smaller plastic/polythene bag. On checking of the contents of that smaller bag it was found to be emitting the fragrance of intoxicant material which seems to be heroin. It was later found out to be heroin. I weighed the contents, alongwith the said small polythene/plastic cover, on digital weighing scale, and it was found to be weighing 12 grams of heroin. Parcel was prepared after putting the recovered contraband, alongwith the polythene bag in a plastic box and sealed with my seal and stamped "SS" and further a lady purse of Rose colour was also recovered from the bigger polythene bag. The said lady purse was opened and checked. It was found to be containing 10 notes of 500 Rs, 16 notes of 200 Rs and 18 notes of 100 Rs totaling out to be 10,000Rs.xxxxxx”*

12. Thus, the money was not even recovered along with the contraband but from the petitioner's purse. It is most common for Indian woman to keep money in their purses. The police had no evidence to term such money as drug money, and forgetting



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the statutory mandate of S. 23 (1) and (2) of BSA, 2023, invoked the stringent penal provision of S. 27-A just to trigger the legislative restrictions placed on bail through S. 37 of NDPS Act. In such a background, S. 37 of the NDPS Act shall neither attract in law nor through its inclusion in the FIR.

13. S. 27A of the NDPS Act reads as follows:

27A. Punishment for financing illicit traffic and harbouring offenders.—Whoever indulges in financing, directly or indirectly, any, of the activities specified in sub-clauses (i) to (v) of 3[clause (viii**b**) of section 2] or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

14. At the stage of invocation of S. 27A, there was no prima facie evidence of financing, directly or indirectly. Thus, the rigors of S. 37 of the NDPS Act shall also not attract.

15. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime of recovery of heroin. However, given the quantity of 12 grams of heroin, it is not a case where bail should be denied.

16. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

17. 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.

18. 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.



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19. 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)	

20. This order is subject to the petitioner's complying with the following terms.

21. 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.

22. 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 v. State (NCT of Delhi)*, 2020:INSC:106 [Para 92], (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

23. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. 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. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offence.



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

25. 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.

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

**(ANOOP CHITKARA)**  
**JUDGE**

**18.10.2024**

*Jyoti-II*

Whether speaking/reasoned: Yes  
Whether reportable: YES.