

Present : Sh. GS Bhullar Advocate, counsel for accused/
applicant
Sh. Sukhdev Singh, Additional PP for State

Heard on the application for bail under Section 483 of BNSS, moved on behalf of accused/ applicant, namely Sarwan Singh @ Samma son of Major Singh, in the case FIR No. 99 dated 26.07.2024, under Section 21 and 29 of NDPS Act and Section 25 of Arms Act, PS Kot Ise Khan, District Moga.

2. As per allegations of the prosecution, on 26.07.2024, in the area of village Nasirpur Jania, 800 gram of Heroin, one computer scale and kit bag were recovered from conscious possession of accused Saudagar Singh, who suffered a disclosure statement on 30.07.2024, during the investigation of the case, that he was in close association with Sarwan Singh @ Samma son of Major Singh resident of Mastewala, PS Kot Ise Khan and on an earlier occasion, 255 gram of Heroin belonging to the said Sarwan Singh @ Samma was recovered from his (accused Saudagar Singh @ Sagar) possession, for which an FIR bearing No. 70 dated 06.06.2022, under Section 21 and 25 of NDPS Act, PS Kulgarhi, District Ferozepur was registered against him and after release from custody on bail, he (accused Saudagar Singh @ Sagar) again got involved in trafficking of intoxicating substances and the above named Sarwan Singh @ Samma got arranged two country made .32 bore pistols with live cartridges for him for an amount of Rs. 80,000/- and the Heroin weighing 800 gram recovered in the matter in hand was got arranged to him by Gurjit Singh son of Arjan Singh, who was also introduced to him by Sarwan Singh @ Samma and the said Heroin was to be sold by him to Ankit Sharma @ Pandit son of Som Dutt Sharma resident of House No. 160, Street No.5, Maha Rana Partap Nagar, Jodhewala, Ludhiana and Akshay Kumar @ Sunny son of Manjitpal Singh resident of Mohalla Patwarian, Kotkapura District Faridkot. Thereby, Sarwan

Singh @ Samma son of Major Singh, Gurjit Singh son of Arjan Singh, Ankit Sharma @ Pandit son of Som Dutt Sharma and Akshay Kumar @ Sunny son of Manjitpal Singh were nominated as additional accused vide GD entry No. 20 dated 30.07.2024, PS Kot Ise Khan. On the same day i.e. 30.07.2024, one country made pistol of .32 bore with two live cartridges of the same was recovered from accused Saudagar Singh @ Sagar.

3. IO ASI Davinderjit Singh has turned up in the court and suffered a statement as regards the recovery of contraband having been effected in the present case, while stating that the alleged recovery falls under the commercial category.

4. Learned counsel for the accused/ applicant has argued that the accused/ applicant is innocent and he has been falsely implicated in this case and that he has never committed any offence, as alleged. He has further argued that the alleged false recovery has already been effected. Thereby, he has prayed for allowing the instant bail application.

5. On the other hand, Additional PP for the State has argued that keeping in view the recovery of contraband falling under the commercial category, he is not entitled to concession of bail. Thereby, he has prayed for dismissal of the instant bail application.

6. As elaborated above, 800 gram of Heroin, falling under the category of commercial quantity has been recovered in the present case.

7. It was observed by Hon'ble the Apex Court in State of Kerala V. Rajesh AIR 2020 SC 721 that, *"The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 Cr.PC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are*

satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

8. Neither there are reasonable grounds for believing that the accused is not guilty of such offence under the NDPS Act nor that he is not likely to commit any offence while on bail. Section 37 of the NDPS Act is a tool devised by the parliament to have a check on the menace of dangerous drugs flooding the market and a sine-qua-non for granting bail to the accused under the NDPS Act.

9. Thus, in view of bar contained in Section 37 of NDPS Act and as at this stage, there being nothing on the record to presume that the applicant/accused is innocent or that if released on bail, he shall not indulge into such like activities, the bail application in hand is dismissed. Papers of this bail application be tagged with the remand papers.

Pronounced in open court
Dated 03.01.2025

(Sanjeev Kundi)
Judge, Special Court, Moga.
Moga