

Arjan @ Mohammed Irfan vs State Of Punjab on 25 July, 2024

Author: Anoop Chitkara

Bench: Anoop Chitkara

Neutral Citation No:=2024:PHHC:099057

CRM-M-26068-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26068-2024

Reserved on: 18.07.2024

Pronounced on: 25.07.2024

Arjan @ Mohammed Irfan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Robindeep Singh Bhullar, Advocate
for the petitioner.

Mr. Gurpartap S. Bhullar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
178	24.08.2022	City South Moga, 22 of District Moga	NDPS Act (Section 29 added later on)

1. The petitioner, incarcerated for violating the provisions of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 10 of the bail petition, the accused declares that he has no criminal antecedents.

3. Petitioner's counsel prays for bail by imposing any stringent conditions and states that they would have no objection to the conditions, i.e., surrender of weapons. The petitioner contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

4. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

5. The prosecution's case is being extracted from short reply dated 04.07.2024 filed by the concerned DySP, which reads as follows:-

"3. That brief facts of the case are that on 24.08.2022 a police party headed by ASI Major Singh was going towards village Nahal Khote, Charik, Jhandewala, Tarewala, Singhanwala etc. in connection with patrolling and checking of suspected persons, on government vehicle No. PB29X6636 and when police party reached near cremation ground situated in 1 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 village Nahal Khote, then one person having haircut was spotted who was sitting under tree. On the basis of suspicion ASI Major Singh got stopped the vehicle. Then on seeing the police party said person immediately stood and after taking out the polythene from the right pocket of his trouser and threw the same on the ground. Out of said polythene some strips of intoxicant tablets came out and spread. Said person was apprehended by ASI Major Singh with the help of police party and on enquiry he disclosed his name as Arjan @ Mohammad Arfan son of Mohammad Maqsood son of Dil Mohammad resident of Lakhimpur (Bihar). Police party tried to join independent witness, but nobody become ready for the same. Then said Arjan @ Mohammad Arfan picked up said intoxicant tablets and polythene and produced the same before ASI Major Singh. During checking total 19 strips, each strip contained 10 tablets, total 190 tablets make Etizolam 0.5 mg Etezola, Batch No. DNTBo719, MFG No. JUL.2021, Exp. June 2023, were recovered. Parcel of recovered tablets was prepared and same was sealed by ASI Major Singh with his seal MS and sample seal was prepared separately. Then ASI Major Singh introduced himself to said Arjan @ Mohammad Arfan and told him that he has doubt that there is some intoxicant substance in his possession, so his search is to be conducted, but he has legal right to get conduct the search in presence of any gazetted officer or any magistrate. But he replied that as the recovery has already been conducted and now he is not in possessing anything else. Moreover, ASI Major Singh can conduct his search. In this regard notice u/s 50 (1) of NDPS Act was issued."

6. Petitioner seeks bail on the ground of custody of 1 year 09 months and 01 day as per custody certificate dated 27.05.2024 which would take the total custody to around 1 year 11 months. Counsel for the petitioner further seeks bail on the ground that the original ruqa in the charge sheet of this case was in typographical form, whereas from the perusal of the FIR, it could be nowhere found that, while on patrolling, police was in possession with any laptop/computer/printer/inverter etc. which are essentially required to send the original ruqa to the concerned police station in a typographical form.

7. State counsel opposed the bail on the ground that as per FSL, the weight of the tablet was 134 mg and the total recovery is 25.56 gms which is commercial quantity. Although petitioner has previous criminal history but in one FIR, he has undergone the sentence which is not commercial and in one

FIR, he was acquitted.

8. In Md. Aliul Islam @ Aliul Islam @ Aliul vs The State of West Bengal, Criminal Appeal No.1202/2024, the Hon'ble Supreme Court held as under:-

"Heard learned counsel for the appellant in support of the petition and learned counsel for the State and perused the 2 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 material on record. The appellant is in custody for approximately 1 year 4 months.

During the course of submission it was pointed out by the learned counsel for the appellant that in another case the appellant has been granted bail and therefore, similar relief may be granted by this Court in this case.

The said submission is in response to the submission made by the learned counsel for the respondent-State that this is not the only case in which the appellant has been apprehended. She further submitted that a huge quantity of codeine cough syrup was recovered from the premises (Godown) which has been tenanted by the appellant herein. Considering the facts on record, in our view, the case for bail is made out."

9. In Debrata Mondal vs State of West Bengal, Special Leave to Appeal (Crl.) No.14970/2023, a Division Bench of Hon'ble Supreme Court held as under:-

"3. Going by the allegations, 290 bottles of phensedyl syrup was recovered from the possession of the petitioner and the co-accused. The fact is that the co-accused was enlarged on bail by the High Court. The petitioner is in custody since 10.01.2022. Taking into account the aforesaid aspects, we are of the considered view that the petitioner can be enlarged on bail, subject to the terms and conditions to be imposed by the Trial Court. Ordered accordingly. In that regard, the petitioner shall be produced before the Trial Court, forthwith."

10. In Santarul Islam @ Santa vs The State of West Bengal, Special Leave to Appeal (crl.) No.13169/2023, a Division Bench of Hon'ble Supreme Court held as under:-

"3. Considering the above and looking at the nature of the contraband (100 bottles of Phensedyl cough syrup) which recovered from the accused in FIR No.18/2022. appropriate to grant bail to the petitioner. deem it Accordingly the petitioner (Santarul Islam Santa) be released on bail in connection with the case arising out of Jalangi P.S. Case No.18/2022. Appropriate bail conditions be imposed by the learned Trial Court."

3 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024

11. In *Indrajit Mondal @ Piglu vs The State of West Bengal*, Special Leave to Appeal (Crl.) No.8512/2023, a three Bench of Hon'ble Supreme Court held as under:-

"2. FIR No 355 of 2021 was registered at PS Murshidabad for offences punishable under Sections 21(c) and 29 of the Narcotic Durgs and Psychotropic Substances Act 1985. The allegation is that the petitioner was found to be in possession of ten litres of codeine phosphate.

3. We have heard Mr Praveen Swarup, counsel appearing on behalf of the petitioner, and Mr Shreyas Awasthi, counsel appearing on behalf of the State of West Bengal.

4. Counsel appearing on behalf of the State of West Bengal states that the charges have been framed on 4 January 2024 and the prosecution proposes to examine seventeen witnesses.

5. The petitioner is in custody for over two years and five months. There is no prospect of the trial concluding on an early date. Hence, we are of the view that it would be appropriate and proper to release the petitioner on bail subject to such terms and conditions as may be imposed by the Special Court under NDPS Act-cum-ADJ, Second Court Berhampore, Murshidabad in connection with NDPS Case No 166 of 2021. Ordered accordingly."

12. In *Narjul Islam @ Najbul Hoque vs The State of West Bengal*, Special Leave to Appeal (crl.) No.14172/2023, a Division Bench of Hon'ble Supreme Court held as under:-

"The counsel for the petitioner would submit that the petitioner was arrested on 19.11.2022 in connection with the case arising out of FIR No.477/2022 and the High Court rejected bail for the petitioner under the impugned order on 06.07.2023. It is also pointed out that the 100 bottles of Phensedyt Syrup containing codiene phosphate were seized in the case. Mr. Gupta would then advert to various bail orders passed by this Court in cases with similar kind of contraband.

Admittedly, charges are yet to be framed and the trial is unlikely to conclude in near future. The State counsel by way of explanation submits that charges in this case could not be framed as one of the accused is absconding.

4 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 Having regard to the circumstances here and the remote possibility of the trial to conclude in near future and the incarceration of the petitioner for over a year in connection with the contraband in question, we deem it appropriate to grant bail to the petitioner.

Accordingly, the petitioner (Najrul Islam Najbul Hoque) be released on bail. Appropriate terms and conditions for bail is to be imposed by the learned Trial Court."

13. In *Nandalal Mondal @ Abhay Mondal vs The State of West Bengal*, a Division Bench of Hon'ble Supreme Court held as under:-

"2. The allegations are that the petitioner along with other accused persons were found in possession of two plastic bags a cough containing a total of 10,000 ml. Of codeine phosphate narcotic substance. It further syrup, which is notified as a narcotic substance. It further appears from the contents of the FIR that the petitioner, who was found in conscious possession of two white plastic containers both of which contained 5,000 ml. each of the said liquid. He was apprehended at the spot and is in custody since then.

3. The respondent State of West Bengal has filed its counter affidavit, in which it is candidly acknowledged that though the investigation is complete and the chargesheet has been filed, however, the charges are yet to be framed. The prosecution proposes to examine 10 witnesses. The conclusion of trial will, thus, take considerable time. The petitioner is in custody for the last more than one and a half years.. He does not have any criminal antecedents.

4. According to learned counsel appearing on behalf of respondent State, the narcotic substance allegedly recovered from the petitioner's possession is of commercial quantity' and, as such, the rigors of Section 37 of the NDPS Act are attracted. We have considered the submission.

5. Taking into consideration the period already undergone by the petitioner in custody; the fact that he does not have any criminal antecedents and also keeping in view that the prolonged incarceration will not serve the cause of substantial justice, however, without expressing any views on 5 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 the merits of the case, we are inclined to release the petitioner on bail at this state. The petitioner is, accordingly, directed to be released on bail subject to the following directions:

(i) The petitioner shall furnish bail bonds to the satisfaction of the Trial Court.

(ii) The petitioner shall appear before the Trial Court regularly on each and every date of hearing.

(iii) In case the petitioner is found involved in any other case under the NDPS Act, in that event, the bail granted to him shall stand cancelled automatically and he shall be liable to surrender immediately.

6. The accordingly. Special Leave Petition stands disposed of accordingly."

14. In *Subhashri Das @Rana @ Subhoshree vs The State of West Bengal*, Special Leave to Appeal (Crl.) No.15284/2023, a Division Bench of Hon'ble Supreme Court held as under:-

"The accusation is that the petitioner was found in possession of 60 bottles of Phensedyl Syrup (100 ml in each bottle). The charge sheet was filed on 31.8.2022. The petitioner has been in custody since 12.3.2022. The application for bail filed by the petitioner was rejected by the High Court and hence this special leave petition.

Heard learned counsel for the petitioner and also counsel for the Respondent-State. Taking note of the nature of the accusation and the fact that the petitioner is in custody since 12.3.2022, we are of the considered view that the petitioner can be ordered to released on bail subject to the terms and conditions to be imposed by the Trial Court. Ordered accordingly. The petitioner shall be produced before the Trial Court forthwith for compliance with the order."

15. In Mithun Sk. & Anr. Vs The State of West Bengal, Criminal Appeal No.1200/2024, the Hon'ble Supreme Court held as under:-

"The appellants have been booked for the crime registered pursuant to FIR No.158 of 2022 dated 26.07.2022 6 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 lodged with Police Station Sagarpara, District Murshidabad, under Section 21(C)/29 of the NDPS Act, 1985. The High Court noted that the narcotic substance i.e. 388 bottles of phensedyl syrup containing codeine phosphate which is above commercial quantity was recovered from the appellants and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

Heard learned counsel for the parties.

We have perused the counter affidavit filed by the respondent-State.

It is submitted by the learned counsel for the appellant(s) that the appellants were not in conscious possession of the offending material and that the prosecution has not complied with the requirements of Section 52-A of the Act, 1985. Further, the appellants are in jail since 26 July 2022. Therefore, the appellants may be granted bail during the pendency of the trial.

However, learned counsel for the respondent submitted that the recovery has been made from the appellants herein.

Considering the above facts on record, in our view, the case for bail is made out."

16. In SK. Nasiruddin @ Nasirddin SK. Vs State of West Bengal, Criminal Appeal No.1415 of 2024, the Hon'ble Supreme Court held as under:-

"5. We note the submission of the learned counsel for the appellant that the appellant was arrested on 12.04.2022 and since then he has been in custody as an under trial

prisoner. Even though charges have been framed, trial is yet to begin but there is no likelihood of the trial being taken up and completed within a short period of time. It is also submitted that the appellant does not have any criminal antecedents. It is also brought to our notice that the High Court while rejecting the regular bail application had erroneously recorded that 50 ltrs. of codeine phosphate was recovered from the appellant. This is perhaps a mistake as recovery of only 5 ltrs of codeine phosphate which was mentioned in the FIR."

7 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024

17. In Indadul Shah vs The State of West Bengal, Special Leave to Appeal (Crl.) No.12670/2023, a Division Bench of Hon'ble Supreme Court held as under:-

"The petitioner was arrested on 27.10.2022 in furtherance of an FIR dated 27.10.2022 for offences punishable under Section 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He was found in possession of 70 bottles of 100 ml. Phensedyl.

We notice from the record that charge-sheet has already been Filed on 20.04.2023. There is no likelihood of the trial being taken up and completed within a short period of time. There are no criminal antecedents involving the petitioner herein.

Considering the facts and circumstances, we are inclined to grant bail. The petitioner is directed to be released on bail in connection with FIR No. 334 of 2022 registered at Police Station Jalangi District Murshidabad subject to such terms and conditions as may be imposed by the Trial Court."

18. In Hanef Kharsani @ Hanef Sheikh vs Union of India, the Hon'ble Supreme Court held as under:-

"The appellant Hanef Kharsani @ Hanef Sheikh has been booked for the crime registered pursuant to NCB Crime No. 07/NCB/KOL/2023 dated 09.02.2023 in respect of offence punishable under Sections 8 (c) and 21 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act'). The appellant preferred an application under Section 439 of the Code of Criminal Procedure, 1973 before the High Court seeking bail in the instant crime. The High Court noted that the narcotic substance i.e. 415 bottles of Phensedyl Syrup containing codeine phosphate which is above commercial quantity was recovered from the appellant and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

It is submitted by the learned counsel for the appellant that the appellant was not in conscious possession of the offending material and that the prosecution has not complied with the requirements of the NDPS Act. Further, the 8 of 16 Neutral

Citation No:=2024:PHHC:099057 CRM-M-26068-2024 appellant is in jail for approximately one year and two months and the trial is not likely to be completed in the near future. Moreover, in certain identical cases, the accused have been granted relief of bail by this Court. Therefore, the appellant may also be granted bail during the pendency of the trial.

Learned counsel for the appellant also brought to our notice the fact that on completion of the investigation, the charge sheet has been filed and there are seven witnesses but the trial has not yet commenced.

However, learned ASG appearing for the respondent submitted that this is not a fit case for grant of bail inasmuch as the quantity which has been recovered is over and above the commercial quantity and it has become a regular feature in that part of the country where enormous amounts of Phensedyl Syrup containing codeine phosphate is being recovered and, therefore, the application seeking bail may be dismissed.

Considering the facts on record, in our view, the case for bail is made out."

19. In Ripon Seikh & ors. Vs State of West Bengal, Special Leave to Appeal (Crl.) No.16663/2023, a Division Bench of Hon'ble Supreme Court held as under:-

"4. On the other hand, having regard to the duration of custody since the petitioners were arrested on 23.11.2022 and the nature of Contraband i.e., 73 bottles of Phensedyl Syrup containing Codeine Phosphate recovered from the joint possession of the four accused, we deem it appropriate to grant bail to the petitioners Ripon Seikh, Sahin Seikh and Babu Sk, in connection with FIR No. 310 of 2022 registered at P.S. Sagarparara, District Murshidabad. Appropriate bail conditions be imposed by the learned Special Court, Murshidabad. It is ordered accordingly."

20. In Nijam Sheikh @ Md. Nijam SK @ MD Nizam SK vs The State of West Bengal, Criminal Appeal No. _____ of 2024, the Hon'ble Supreme Court held as under:-

9 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 "The appellant Nizam Sheikh Md. Nijam Sk Md. Nizam Sk has been booked for the crime registered pursuant to FIR No.90/22 dated 19.03.2022 lodged with Police Station Lalgola, District Murshidabad, under Section 21(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act' for short). The High Court noted that the narcotic substance i.e. 55 bottles of phensedyl syrup containing codeine phosphate which is above commercial quantity was recovered from the appellant and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

Heard learned counsel for the appellant and counsel for the respondent-State.

It is submitted by the learned counsel for the appellant that the appellant was not in conscious possession of the offending material and that the prosecution has not complied with the requirements of Section 52-A of the NDPS Act. Further, the appellant is in jail since 28.03.2022 and the trial is not likely to be completed in the near future. Therefore, the appellant may be granted bail during the pendency of the trial.

Learned counsel for the Respondent-State submitted that recording of evidence is to be commenced from tomorrow (i.e. 16.04.2024) and there are only eight (08) witnesses as per the charge sheet and the trial would be completed expeditiously. Therefore, at this stage, the appellant need not be released on bail.

It was further submitted that the other seven (07) co-accused who were granted bail, are not cooperating with the trial of the case and therefore, this is not a fit case where bail may be granted to the appellant herein.

Considering the facts on record, in our view, the case for bail is made out."

21. In *Moidul Sarkar vs The State of West Bengal*, Special Leave to Appeal (Crl.) No.15668/2023, a Division Bench of Hon'ble Supreme Court held as under:-

10 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 "3. Having considered the duration of custody and the nature of Contraband i.e., 320 bottles of Phensedyl Syrup seized from the petitioner, we deem it appropriate to grant bail to the petitioner Mohidul Sarkar in connection with FIR No. 224 of 2022 registered at P.S. Sagarpara. The similar orders passed by this Court in SLP (Criminal) No. 12911 of 2023 on 22.01.2024 and Criminal Appeal No. 409 of 2024 on 25.01.2024 also noted. are Appropriate bail conditions be imposed by the learned Special Court, Murshidabad. It is ordered accordingly."

22. In *Saniya Bibi @ Soniya Bibi vs The State of West Bengal*, Special Leave to Appeal (Crl.) No.2354/2024, a Division Bench of Hon'ble Supreme Court held as under:-

"3. Mr. Dibyadyuti Banerjee for the petitioner points out that the Contraband in question is 105 bottles of Phensedyl Syrup and the petitioner, who is a lady, is in custody for about 2 years 3 months since he was arrested on 24.01.2022. That apart, the next date of trial is fixed on 23.07.2024 and although 16 witnesses are cited, not a single witness is examined so far.

4. Notice in this case was issued on 04.03.2024 and today the State counsel prays for time to file counter affidavit.

5. Having considered the circumstances and more particularly the duration of custody, the nature of the Contraband and the unlikely possibility of the trial getting concluded on an early date, we deem it appropriate to grant bail to the petitioner

Saniya Bibi@ Soniya Bibi in connection with the FIR No. 30 of 2022 dated 24.01.2022 registered with P.S. Jalangi, District Murshidabad. It is ordered accordingly. Appropriate bail conditions be imposed by the learned trial court."

23. In Saddam Hossain vs State of West Bengal, Special Leave to Appeal (Crl.) No.15496/2023, a Division Bench of Hon'ble Supreme Court held as under:-

"2. Notice in this case was issued on 08.12.2023, with the towing order:-

"... The counsel refers to the FIR 37/2023 to point out that 72 bottles of 100 ml Phensedyl Syrup were 11 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 seized and since each 5 ml contains 10 mg of codeine phosphate, the total quantity of codeine phosphate in the 72 bottles would be around 14.4 grams. Such quantity is below the stipulated commercial quantity in the Schedule to the NDPS Act.

It is further pointed out that the petitioner has been in custody for 10 months and charges are yet to be framed in the matter.

Issue notice on the plea for bail, returnable in four weeks.

Dasti notice on the standing Counsel for the State, in addition."

3. Learned counsel for the state in his turn submits that evidence of witnesses is scheduled to commence in July 2024.

5. Looking at the above facts and more particularly the nature of the contraband and the long custody of the petitioner since 23.01.2023, we deem it appropriate to grant bail to the petitioner. Accordingly the petitioner (Saddam Hossain) be released on bail in connection with the case arising out of FIR No.37/2023 registered at P.S. Raninagar, District Murshidabad. Appropriate bail condition be imposed by the learned Trial Court."

24. In Bijon SK @ Golam Murselim vs The State of West Bengal, Special Leave to Appeal (crl.) No.6046/2024, a three Bench of Supreme Court held as under:-

"1. The petitioner has been denied bail in connection with FIR No 252 of 2022 dated 16 November 2022 lodged at PS Doulatabad, District Murshidabad under Sections 21(c), 22

(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985. The allegation is that the petitioner was the owner of a truck which was alleged to be used for the transport of 9075 bottles of Phensedyl.

2. The petitioner is in custody since 5 August 2023.

Charges have been framed. The prosecution proposes to examine 23 witnesses.

12 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024

3. Considering the above facts and circumstances, an early conclusion of the trial does not seem possible. Conscious as the Court is of the provisions of Section 37 of the NDPS Act, we are of the view that the petitioner should be released on bail, subject to such terms and conditions as may be imposed by the Special Court under NDPS Act, Berhampore, Murshidabad. Accordingly, the petitioner is directed to be released on bail, subject to such terms and conditions as may be imposed by the Special Court under NDPS Act, Berhampore, Murshidabad in NDPS Case No 226 of 2022."

25. In Chitta Biswas @ Subhas vs The State of West Bengal, Criminal Appeal No(s).245/2020 (@ SLP(Crl.) No. 8823/2019), the matter before Hon'ble Supreme Court was 46 bottles of phensydril cough syrup and the petitioner was in custody from 21.07.2018. Considering the custody of more than 1 1/2 years vide order dated 07.02.2020 granted bail to the petitioner. Even in the present case, the quantity is a manufactured drug i.e. Etizolam tablets and it is not a hard drug like heroin, charas, opium or other drugs of DO group, thus petitioner is entitled to bail given the ratio of Chitra Basu's case (supra).

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

27. In Madhu Tanwar and Anr. v. State of Punjab, 2023:PHHC:077618 [Para 10, 21], CRM-M-27097-2023, decided on 29-05-2023, this court observed, [10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to 13 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

28. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above in the following terms:

(a). Petitioner to furnish a personal bond of Rs. Ten thousand (INR 10,000/-); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must be satisfied that if the accused fails to appear in court, then such surety can produce the accused before the court. OR

(b). Petitioner to hand over to the concerned court a fixed deposit for Rs.

Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the similar amount.

(c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, 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.

(d). The petitioner is 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 declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail order.

(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

1. AADHAR number

2. Passport number (If available) when the attesting officer/court thinks it appropriate or considers the 14 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 accused as a flight risk.

3. Mobile number (If available)

4. E-Mail id (If available)

29. The petitioner shall not influence, browbeat, pressurize, or 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.

30. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

31. 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.

32. 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.

33. The conditions mentioned above imposed by this court are to endeavor that the accused does not repeat the offense and to ensure the safety of society. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], 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 15 of 16 Neutral Citation No:=2024:PHHC:099057 CRM-M-26068-2024 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."

34. If the petitioner finds the 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.

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

36. 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. If 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 the terms above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA) JUDGE 25.07.2024 Jyoti Sharma Whether speaking/reasoned: Yes Whether reportable: No. 16 of 16