

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47526-2024
Reserved on: 10.01.2025
Pronounced on: 30.01.2025

Charanjeet Singh @ Channi @ Charan Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kuldip Singh, Advocate,
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
56	22.06.2024	Sadar Jalalabad, District Fazilka	21(c), 23 of NDPS Act and Sections 10, 11 & 12 of Aircraft Act, 1934

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, seeking anticipatory bail.

2. In paragraph 13 of the bail application and para 6 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	57	23.09.2024	21 (c)/61/85 of NDPS Act	Sadar Fazilka

3. The facts and allegations are taken from para 4 of the status report filed by the State.

*"4. That precisely the facts of the case are as under:-
a) That the present FIR was registered as per letter of AC Coy Commander 'B' Coy 52 BN BSF BOP Jodha Bhaini wherein it was stated that on 22.06.2024 during search operation carried out by the B.S.F. officials in the area of BOP Jodha Wala, recovery of a drone and 01 packet containing heroin weighing 520 grams heroin was effected. Said recovered drone and contraband was handed over to police authorities of PS Sadar, Jalalabad. In the said letter, names of four persons were mentioned as suspected persons involved in the drone activity. Copy of said letter of BSF is appended*

herewith as Annexure R-1 for the kind consideration of this Hon'ble Court.

b) As per letter supra, FIR no.56 dated 22.06.2024 was registered under section 21(c), 23 of NDPS Act and sections 10, 11, 12 of Aircraft Act at police station, Sadar, Jalalabad against the present petitioner Charanjeet Singh @ Channi, Gurmail Singh son of Bhagwan Singh, Kulwinder Singh son of Sona Singh residents of Hazara Ram Singh Wala and Baldev Singh son of Balbir Singh resident of village Jodha Bhaini.

c) That after registration of said FIR, recovered contraband and drone were taken into police custody as per law.”

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 his family.

5. The State’s counsel opposes bail and refers to the status report.

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

“ROLE OF PETITIONER:

5. That as per investigation carried out so far, role of the petitioner has been established to the effect the petitioner and his accomplice are actively indulged in cross border trafficking of contraband. Therefore, the petitioner cannot shirk his criminal liability.”

7. The substance tested positive for Diacetylmorphine by the laboratory. Dealing in 520 grams of heroin is a punishable offence under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	520 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	208.00%

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 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.

8. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act and the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

9. The relevant portion of the order dated 23-09-2024 passed by a co-ordinate bench of this Court reads as follows:

“xxx xxx

In the meantime arrest of present petitioner is stayed till the next date of hearing, subject to joining of investigation.”

10. Para 4(i) of the status report filed by the DYSP Jalalabad, reads as follows:

“i) That despite passing of the order dated 23.09.2024 by this Hon’ble

Court, the present petitioner has failed to join the investigation in the present case.”

11. Despite the quantity being commercial, the petitioner flouted the orders passed by this Court while obtaining interim relief of stay of arrest. The petitioner’s conduct in not joining the investigation was tantamount to not meeting the standards of the first rider of the twin conditions of S. 37 of the NDPS Act, 1985, inserted by the Executive, passed by the Legislature, and upheld in judicial scrutiny.

12. Given the above, the petitioner has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

13. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

(a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [*Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Para 6].

(b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [*Customs, New Delhi v. Ahmadaliev Nodira*, (2004) 3 SCC 549, Para 7].

(c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [*UOI v. Prateek Shukla*, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard

requirements under the provisions of the CrPC or any other enactment. [Union of India v. Niyazuddin SK &Anr, **2017:INSC:686 [Para 7]**, (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. Ahmadalieva Nodira, (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, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (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:INSC:165 [Para 11]**, (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, **2020:INSC:620**, (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:INSC:877 [Para 11]**, 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:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 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.

14. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

16. **Petition dismissed.** Interim orders, if any, are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

30.01.2025
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: YES.