

CRM-M-1270-2025
Reserved on: 01.07.2025
Pronounced on: 15.07.2025

...Petitioner

State of Haryana

...Respondent

Present: Mr. Sandeep Sharma, Advocate
for the petitioner.

* * * *

FIR No.	Dated	Police Station	Sections
236	27.07.2024	Munak, District Karnal	18/25/27-A/29 of NDPS Act

and their family.

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

6. Counsel for the petitioner seeks bail on the ground that the evidence against the petitioner is in the shape of disclosure statement which is coming from another disclosure statement. In addition to that, there is no evidence. Counsel for the petitioner further submits that he was not named in FIR. The story forwarded is false. Petitioner claims false implication. To the contrary, State counsel submits that petitioner was earlier arraigned as an accused but he was acquitted. In the present case, there is sufficient evidence connecting the petitioner with the commission of offence and has referred to following portion of status report dated 03.05.2025 which reads as follows:

“10. That the petitioner had played specific role in the present case. The petitioner was indulged in the business of selling and purchase of narcotic substances. Petitioner/accused asked to main accused Sajeev Kumar to bring 1 kg opium for him and in lieu of this, he gave Sanjeev Kumar a total of Rs. 12000/- in cash in advance for bring the opium. Later on, huge quantity of Narcotic substance i.e. 6 kg. 15 gram opium has been recovered from main accused Sanjeev, which falls within commercial quantity. A case under section 18 & 25 of NDPS Act was registered. Section 27-A of NDPS Act has been added in this case on finding involvement of present accused/ Petitioner. Moreover, on 14.08.2024, call details of mobile No. 9996362072 of Vinod Rai, 93065655270, 9467406808 of Sanjeev Kumar @ Sanju, mobile No. 9729626887 of Ramphal, mobile No. 989655127 of Kirshan Kumar and mobile No. 7050253567 of Anil Yadav were collected by Cyber Cell, DPO, Karnal and from the perusal of call details, the conversation between the petitioner and main accused Sanjeev Kumar @ Sanju was found on several occasions. Hence keeping in view the gravity of offence and severity of punishment, the petitioner is not entitled to bail at this stage, thus the present petition deserves to be dismissed.”

7. After dismissal of petitioner's bail application by the Sessions Court, he came up before this Court and this Court had issued notice for calling status report which was filed. After going through the status report, vide order dated 02.04.2025, this Court had stayed the arrest of the petitioner and directed him to join investigation and directed Investigator to file fresh status report mentioning evidence collected in further investigation. Based on this, the concerned Investigator has filed status report dated 03.05.2025 which has been reproduced above. Perusal of para no.10 clearly mentions that there are call details between petitioner and other co-accused, however perusal of the petition does not explain such call details. On 05.05.2025, when copy of status report was handed over to counsel for the petitioner, he had sought time to file counter. In the order, this Court permitted the counsel for petitioner to file counter but this Court was not insisting on filing such counter because it may be self-incriminatory and the matter was adjourned affording an opportunity to the petitioner to explain in case he wanted to do so. The quantity in the present case is commercial and Section 37 of NDPS Act places burden on the accused but subsequently shift the burden on the prosecution in terms of

the conditions and stipulations as mentioned in Section 37 of NDPS Act. Reason has been given about the calls in the counter reply dated 13.02.2025, however those are not enough to grant bail.

8. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act.

9. In State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991, wherein the Hon'ble Supreme Court holds,

[8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

[9]. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

10. The quantity that was seized falls in the commercial category. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and is not likely to commit any offence while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offence punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

11. The State's counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions

¹ **37. Offences to be cognizable and non-bailable.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

12. 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 exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. 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 them 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 an offense and is not likely to commit any offense while on bail. If either of these 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 the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.

13. The quantity involved is commercial, and the burden to satisfy the rigor of condition of Section 37 of the NDPS Act was on the petitioner, which he did not discharge to the satisfaction of the statutory requirements. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for anticipatory bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

14. The learned Special Judge, while dismissing the anticipatory bail of the petitioner, has given elaborative reasons and considered almost every aspect.

15. The grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act.

16. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon’ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

17. 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.

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

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

(ANOOP CHITKARA)
JUDGE

15.07.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.