

CRM-M-3110-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3110-2025
Reserved on: 07.07.2025
Pronounced on: 16.07.2025

Ashok Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. K.S. Sidhu, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, Asst. AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
99	26.10.2024	Sadar Jalalabad, District Fazilka	21 of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In the bail petition, the petitioner is silent about criminal antecedents, however per paragraph 6 of the status report dated 03.02.2025, petitioner is involved in one more case, which is as follows:-

Sr. No.	FIR No.	Dated	Police Station	Sections
1	20	10.03.2024	Vairo Ke	21/61/85 of NDPS Act

3. The facts and allegations are taken from the FIR (Annexure P-1), which reads as follows:-

“No. Ops/FIR/2024/475, Office of the coy commander "F" coy 52 BN BSF BOP Tahliwala Fazilka, Punjab dated, the 26th Oct, 2024. To, The Station House Officer (SHO) Police Station Sadar Jalalabad, Fazilka (Punjab). Sub: Lodging of FIR: Apprehension of two Indian National. It is to inform you that, in the evening of 25th Oct 24, at approximately 22:10 Hrs information about the suspicious individual was received in the depth area of BOP Tahliwala under the jurisdiction of 52 BN BSF. Respondent promptly, the Officiating Coy. Commander, along with troops, reach at

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*mentioned area the BSF party c/out search operation and successfully apprehended two individual, while three others managed to escape. The details suspects are identified as Vikram s/o Jaswant Singh, age 20 years, R/O Dhab Khushal Joya near Malam in Sai Doke, Distt. Fazilka, Angrej Singh s/o Puran Singh age 24 years, r/o Hazara Ram Singh Wala, Post office Albouchar Kalan, District Fazilka. During initial questioning both suspect admitted that this was their first attempt at locating a consignment, which had reportedly been last in the paddy field. Thus suspected smugglers disclosed that they sent to find the missing consignment by three associate i.e. Ashok Singh from Kattiyawala near Mahalam, Jalalabad, Aman s/o Baljeet Singh from Hazara Ram Singh Wala, and an unidentified individual from Tahliwala village. According to the suspect, the group had been picked up from their home and transported on two motorcycle to the search area. Although unable to specify when the package was dropped, they mentioned that previous attempt to locate it had been unsuccessful. Following this information, a thorough search was conducted the next morning starting 0600 hrs on 26th Octo, 2024 to 0920 hrs in the suspected drop area. The search recovered a packet suspected to contain heroin, weighing approximately 540 gm including its yellow adhesive tape wrapping with an attached illuminating strip. Additionally, an Iphone X and one US Dollar was seized from the suspects at the place of occurrence. The location of the recovery was recorded at coordinates 30*34'51"N and 74*076'01"E, appx 1500 mtrs from the international border, 1350 mtrs from the fence, and 2000 mtrs from BOP Tahliwala, the nearest village the recovery site is Tahliwala in District Fazilka, Pb. In view of above it is requested to lodge an FIR against the above mentioned apprehended personnel and the seized items are being handed over to you for your further necessary action. Submitted for further necessary action please. Sd/ in English INSP Mehendra Singh Coy. Commander "F" Coy 52 BN BSF."*

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 dated 03.02.2025.

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

"4. That the role of petitioner in commission of offence has duly been established by the disclosure statement of co-accused Vikram singh who

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categorically disclosed that the present petitioner Ashok Singh and co-accused Amandeep had asked him to accompany them to pick up the smuggled Heroin near Indo-Pak border and had also offered them to pay considerable amount in lieu thereof. The said accused were apprehended by BSF followed by recovery of 527 gram Heroin, while the petitioner and co-accused Aman alias Amandeep Singh succeeded to flee away. As per investigation carried out so far, relations of petitioner and other co-accused have come to the fore and the factum of indulgence of all the accused in drug trade has been established. Therefore, the petitioner cannot shirk his criminal liability.”

REASONING:

7. 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.

8. Petitioner in connivance with other co-accused has done smuggling from the Indo-Pak border, which is a serious offence. Petitioner fails to dis-associate himself from the allegations levelled against him.

9. 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.

10. 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].

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- (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. Ahmadaliev 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. Ahmadaliev 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

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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.

11. 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.

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

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

(ANOOP CHITKARA)
JUDGE

16.07.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.