



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

262

CRM-M-6685-2025
Decided on: 02.04.2025

Shanty

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Omkar Chauhan, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
311	20.06.2024	Thanesar Sadar, Distt. Kurukshetra	15-C, 61, 85 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State, which reads as follows:

“2. That on 20.06.2024 at about 5.00 AM, Sub Inspector Rajapl no.239/A along with ESI Jagpal no.258, Constable Parveen Kumar no.281, Constable Naseeb Singh no.340 and Constable Sanjeev Kumar no.249 are present in Government Vehicle No.HR07GV-7171 whose driver is Head Constable Parveen Kumar no.486 for patrolling and investigation crime, near Ghee's Factory Village Masana NH-44, that a secret informer informed SI Rajpal that Tajinder Singh son of Harvansh Singh resident of New Achadi Akalgarh District Ludhiana and Daljeet alias Santy son of Bhag Singh resident of Nathowal Raikot District Ludhiana Punjab, both of whom are canter drivers, load goods from Punjab in their canter no.PB10ES-7130 and go to Jharkhand and Kolkata and on their return, they bring huge quantity of doda/poppy straw hidden with the loaded goods and sell it in Punjab. At present, they will go to Punjab via NH-44.



If immediately a blockade is put up at Mannat Haveli Hotel NH-44 Village Masana highway and the above canter is searched, then they can be caught along with huge quantity of doda/ poppy straw.

xxx xxxx After some time one truck has coming seen towards Pipli side and secret informer has given indication in that truck Tejinder Singh son of Harbans Singh and Daljeet alias Santy son of Bhag Singh having doda/ churapost in huge quantity. After that ASI Gurdev Singh has given indication to driver of that truck and stopped the truck bearing no.PB10ES-7130 make Ashoka Ley land. At about 06.05 AM ASI Gurdev Singh has apprehended the above said truck and told his name and place of post to driver of above said truck and on asking he has told his name Tejinder Singh son of Harbans Singh resident of New Abadi Akalgarh District Ludhiana. After that ASI Gurdev Singh told Tejinder Singh that they have suspicion that you have some narcotic contraband in your truck and for that your search and search of your truck is required and for that you have legal rights to give your search and search of your truck before Magistrate or before gazetted officer and on that consent notice under Section 50 of NDPS Act were prepared separately and contents of the same were read over to Tejinder Singh. The notices were signed by the accused Tajinder Singh and witnesses separately. After thinking 02/03 minutes Tejinder Singh told that he wants to give search before gazetted officer and consent notices under Sections 50 of NDPS Act served upon Tejinder Singh. ASI Gurdev Singh from his mobile no.94660-xxxx made telephonic call to mobile no.99921-xxxx of Sh. Paramjit Singh Naib Tehsildar Thanesar and told the facts of the present case and requested him to reach at the spot who has stated that he is presented at government House and reach at the spot. At about 06.15AM ESI Jagpal no.258 reached at the spot along with copy of notice under Section 42 of NDPS Act and one copy of notice produced by ASI Gurdev Singh. After that ASI Gurdev Singh has made request to passerby to join the investigation of the present case as private witness. At about 07.15 AM Sh. Paramjit Singh Naib Tehsildar Thanesar along with his staff in government vehicle reached at the spot. ASI Gurdev Singh told the facts of the present case to Sh. Paramjit Singh Naib Tehsildar and produced the apprehended Tejinder Singh and truck bearing no.PB10ES-7130 make Ashok Ley Land and officials. Sh. Paramjit Singh Naib Tehsildar Kurukshetra told his name, designation and place of post to Tejinder Singh and he has produced the copies of notices under Section 50 of NDPS Act before Sh. Paramjit Singh Naib Tehsildar Thanesar, District Kurukshetra and on asking he has told his name as Tejinder Singh son of Harbans Singh



resident of New Abadi Akalgarh, District Ludhiana. At about 07.25 AM Sh. Paramjit Singh before conduction search of truck of Tejinder Singh has conducted search of ASI Gurdev Singh but no narcotic substance was recovered in his possession. As per direction of Sh. Paramjit Singh, ASI Gurdev Singh firstly conducted personal search of above named Tejinder Singh but no narcotic substance was recovered from his possession. After that at about 07.35 AM cabin of above said truck bearing registration No.PB10ES-7130 was searched and during search videography was conducted and during search of above said truck four bags of white colour were recovered and after opening the above said bags brown colour things was found and on asking Tejinder Singh told the recovered contraband is doda/ churapost and as per experience of ASI Gurdev Singh all the recovered four bags contained doda/churapost. On weight of above said bags having 15 Kg doda/churapost in each bag and total weight of recovered contraband found 60 Kg and after completion of all legal formalities the above said recovered doda/ churpost were sealed by preparing parcels after taking samples. During investigation of the present case above named Tejinder Singh has produced the registration certificate of truck no.PB10ES-7130 and as per RC the original owner of above said truck found Jasbir Singh son of Ranjit Singh resident of Raipur Bhokheri Bathinda Punjab. After completion all legal formalities the above named private witness Sandeep Kumar and Sh. Paramjit Singh Naib Tehsildar Thaneser were left the spot. The report under Section 52 of NDPS Act and 55 NDPS Act was also prepared as per law and recovered contraband and above said vehicle deposited in malkhana police station Sadar Thanesar, District Kurukshetra.”

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. Counsel for the petitioner seeks bail on the grounds, which have already been mentioned in the bail petition and instead of re-summarizing the same, this Court deems it appropriate to extract the same from the copy of the bail petition, which read as follows:

“6. That moreover, as against present petitioner, it has been alleged that he is the same person who fled away from the spot and later on got arrested after one day. However, bare perusal of FIR would make it more than clear that said person who fled away from the spot and who was allegedly present on the spot was one Daljeet Singh @ Shanty son of Bhag



Singh, resident of Nathowal Raikot, district Ludhiana, Punjab. Whereas, present petitioner is named Shanty, son of Sukhdev Singh, resident of House No.1380/10, Mandi Mullanpur, Indra Colony, Mullanpur, Ludhiana. Therefore, identity of the present petitioner did not match with that of the person who was actually present on spot. Hence, in order to shield main accused, present petitioner has been implicated by the police.

4. xxx xxx The contraband is alleged to have been recovered from co-accused Tajender Singh (driver of truck) who was apprehended on the spot. Therefore, Ld. Court below has failed to appreciate that even as per the allegations, alleged recovery of narcotic substance is not from the conspicuous possession of the petitioner. The petitioner was not apprehended at the spot. Even otherwise, no useful purpose would be served by detaining the petitioner behind the bars which is also against the settled law of the land based on the principle of 'bail and not jail'.

9. That the petitioner is in custody since 21.06.2024 and no useful purpose would be served by keeping him behind the bars. The investigation has been completed and challan has been presented on 27.11.2024. Moreover, no purpose would be served by keeping the petitioner in judicial custody.

10. That all prosecution witnesses are official witnesses, there is no possibility of the petitioner to influence witnesses or tamper with the prosecution evidence. He will not misuse the concession of bail, if granted by this Hon'ble Court."

6. The State's counsel opposes bail and refers to the reply.

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

"5. That the petitioner has talked from his mobile no.84272-xxxx and co-accused Tejinder Singh from his mobile no.98148-xxxx have talked with co-accused, namely, Amar Singh on his mobile no.62397xxxxx approximately 50-60 times. The copy of call details of mobile no.62397xxxxx of accused Amar is enclosed herewith as Annexure R-3 for kind perusal of this Hon'ble Court."

REASONING:

8. The ground no.1 is absolutely contrary to the facts. The petitioner is presuming that he has been arraigned as a person, who had absconded. Even if this evidence is accepted that petitioner's father name is different from the person who was named in the prime information, it would not entitle any benefit to the petitioner, it is for the reason that the reply does not talk about the petitioner being arraigned as an accused as a person



who had absconded from the truck but he has been arraigned as an accused because the police got to know about his involvement through the interrogation of co-accused Tejinder Singh. After that, it was revealed that the petitioner had purchased the poppy husk and there is a telephonic communication between Tejinder Singh and his co-accused Amar Singh.

9. Thus, the petitioner has been arrested because of the telephonic communications between him and his co-accused. A perusal of the bail petition (supra) does not refer to any explanation about the reasons of such calls, in fact, the petitioner's case is on technical ground that he was not the person, who had absconded and other grounds as mentioned above. Given the quantity involved is commercial, the burden is also on the petitioner to satisfy the rigorous of Section 37 of NDPS Act which he has miserably failed to do so. Given above, the petitioner is not entitled to bail on contradiction as pointed out above and further, the petitioner is not entitled to bail on the ground of custody from 21.06.2024 which would be around less than 01 year. Further, when the quantity involved is commercial, the petitioner is also not entitled to bail as there is possibility of the petitioner to influence witnesses or tamper with the prosecution evidence.

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

11. The petitioner's counsel argued that the call details cannot be relied upon at the bail stage, and if the said evidence is ignored, then there is only the inadmissible evidence of the disclosure statement.

12. In State Vs. Pallulabid Ahmad Arimutta and Ors., 2022 INSC 26 [MANU/SC/0053/2022], a three-member bench of Hon'ble Supre Court holds as follows:

[10] It has been held in clear terms in Tofan Singh v. State of Tamil Nadu MANU/SC/0797/2020 : (2021) 4 SCC 1, that a confessional statement recorded Under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the Petitioner- NCB, on the basis of the confession/voluntary statements of the Respondents or the co-Accused Under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the Accused or the allegations of tampering of evidence on the part of one of the Respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave



Petitions filed by the Petitioner-NCB seeking cancellation of bail granted to the respective Respondents, are dismissed as meritless.

13. A perusal of the abovementioned order points out that while dealing with a challenge to bail, the Hon'ble Supreme Court did not consider the call details as evidence to cancel the bail. However, no specific directions were issued to Courts subordinate to the Hon'ble Supreme Court to ignore call details as evidence while considering bails.

14. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offense punishable for offenses 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 offense and is not likely to commit any offense 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 offense punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

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

16. 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

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.



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.

17. 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. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

18. 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 not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

19. In *Union of India (NCB) v. Khalil Uddin*, decided on 21 Oct 2022, 2022 SCC OnLine SC 2109, Hon’ble Supreme Court holds,

[4]. According to the prosecution, contraband material weighing about 13 kgs. of morphine was found in a motor vehicle which was driven by co-accused named Md. Jakir Hussain. During the course of investigation, it was found that the motor vehicle was recorded in the name of Md. Nizam Uddin who had executed a sale letter and handed over the custody of the vehicle to accused Md. Abdul Hai and that accused Md. Jakir Hussain was the driver employed by accused Md. Abdul Hai and that contraband material in question was to be handed over to accused-Khalil Uddin, an owner of a tea shop.

[5]. The High Court by its order which is presently under challenge, directed release of both the accused as stated above on bail after they had undergone custody to the tune of about a year. Questioning grant of relief to said accused, the instant appeals have been preferred.

[7]. What emerges from the record is that large quantity of contraband weighing about 13 kgs of morphine was found in a car



which was driven by Md. Jakir Hussain. Whether the role played by said Md. Jakir Hussain could get connected with both the accused is a question.

[8]. The answer to said question could be the statement recorded of Md. Nizam Uddin. The statement of Md. Jakir Hussain recorded under Section 67 of the Act has also named his owner accused Abdul Hai. We are conscious of the fact that the validity and scope of such statements under Section 67 has been pronounced upon by this Court in *Tofan Singh v. State of Tamil Nadu*. In *State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta*, the rigour of law lay down by this Court in *Tofan Singh* was held to be applicable even at the stage of grant of bail.

[9]. However, going by the circumstances on record, at this stage, on the strength of the statement of Md. Nizam Uddin, though allegedly retracted later, the matter stands on a different footing. In our considered view, in the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail. We, therefore, allow these appeals, set aside the view taken by the High Court and direct that both the appellants be taken in custody forthwith.

[10]. We have been given to understand that the charge-sheet has been filed. In the circumstances, we direct the Trial Court to take up the matter and conclude the proceedings as early as possible and preferably within six months from the receipt of this order.

20. In *Narayan Takri v. State of Odisha*, decided on 10 Sep 2024, SLP (Crl.) 8198-2024, Hon'ble Supreme Court holds,

The petitioners are in custody since 28th May, 2022 for alleged commission of alleged offence under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. As per the FIR allegation, 125.3 kg. of "Ganja" was recovered from the petitioners.

[3]. It is not in dispute that the trial has commenced and that three prosecution witnesses have been examined till date.

[4]. Learned counsel for the petitioners submits that the third prosecution witness was examined as far back as on 28th January, 2024 and since then, no other prosecution witness has been examined. There is, however, no such averment in the petition.

[5]. Learned counsel appearing for the respondent submits that every endeavor shall be made on behalf of the prosecution to have all the witnesses examined by the end of this year.

[6]. The trial court is encouraged to expedite the trial and give its decision as early as possible, in accordance with law.

[7]. We, however, do not see any reason to interfere the impugned judgment and order at this stage; however, it is clarified that in the event the trial is not completed by the end of this year, the petitioners shall be at liberty to renew their prayer for bail before the trial court.

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



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22. **Petition dismissed.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

02.04.2025

Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: YES.