

CRM-M-8494-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8494-2025
Reserved on: 11.03.2025
Pronounced on: 25.03.2025

Rajinder Singh @ Mappa ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Damandeep Singh Bhullar, Advocate
For the petitioner.

Mr. Adesh Pal Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
16	15.01.2025	STF, Phase-4, Mohali	21/29/61/85 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 paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the status report dated 18.02.2025 filed by the State. On 15.01.2025, based on secret information, the Police seized 266 grams of heroin from the possession of one Dilbagh Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS 2023.
4. During custodial interrogation, the accused-Dilbagh Singh confessed before the Police officer that they had purchased the drugs from the petitioner. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.
5. 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

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petitioner and their family.

6. On 03.03.2025, this Court had passed the following order:-

“The concerned investigator to obtain record of mobile number 90416-07842 from the Telecom Operator as to whom it was issued and the documents which were annexed at the time of issuance.

List on 11.03.2025.”

7. On 11.03.2025, State has filed the short affidavit and paras 4 & 5 of the said affidavit reads as follows:-

“4. That in due compliance of the order dated 03.03.2025 passed by the Hon'ble Court, it is submitted that as per investigation it has come to light that the accused Dilbagh Singh used to talk from his Mobile No. 95308-08698 with Rajinder Singh @ Mappa (present petitioner) on mobile No. 90416-07842. As per the record of the Telecom company, the mobile No. 90416-07842 is registered in the name of Lakhwinder Singh son of Nikku Ram, resident of Village Karmuwala, District Ferozpur according to the Customer Application Form (CAF) provided by the telecom company. A copy of Customer Application Form is attached herewith as Annexure R-1.

5. That further above said Lakhwinder Singh has been joined in the investigation and enquiry was conducted from him with regard to the mobile No. 90416-07842 registered in his name. In this regard, Lakhwinder Singh has furnished a duly Notarized affidavit dated 07.03.2025 to the investigating agency, in which he has mentioned that the petitioner had obtained his Aadhaar card and got issued the mobile No. 90416-07842 in his name and he retained the same with him with the promise to return it to him within few days. Thereafter, when he requested the petitioner to return the SIM/mobile number, firstly, he put off the matter on the pretext that he has dispose of the SIM, but later on he came to know that the SIM is active with the petitioner. Lakhwinder Singh lastly stated that the said mobile number is being used by the petitioner and he had never used the same. True translated copy of the affidavit of Lakhwinder Singh is attached herewith as Annexure R-2/T.”

8. The State's counsel opposes bail and refers to the above said affidavit.

REASONING:

9. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act. Further the petitioner has also misused the identity proof of

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some person, the petitioner is not entitled to bail.

10. 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.

11. The quantity of heroin 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.

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

13. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The

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.

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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.

14. 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.

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

16. 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.

17. 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 enroled 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

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SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

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

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

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

(ANOOP CHITKARA)
JUDGE

25.03.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.