

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9943-2025
Reserved on: 05.05.2025
Pronounced on: 13.05.2025

Bagdi Bai ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
266	04.06.2024	City Hisar, District Hisar	18(b) of NDPS Act (Sections 27A, 29 & 31 of NDPS Act added during investigation)

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. Per paragraph 15 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	1054	21.10.2010	18 of NDPS Act (Section 31 of NDPS Act added on 21.08.2024)	City Panipat

3. The facts and allegations are taken from the reply filed by the State. On 04.06.2024 based on secret information, the Police seized 2 kg 654 gram opium from the possession of accused-Raju Bairagi, Kamla Bai, Sunil Kumar and Lalita Devi. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

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.
6. It would be appropriate to refer to the following portions of the reply affidavit dated 10.03.2025 which read as follows:

“22. The role and evidence against the petitioner-accused Bagdi Bai alias Bhagti is as under:-

A) Role & Culpability of petitioner:-

i) That present accused Bagdi Bai has remained involved in the transportation of recovered 2.654 kg opium (commercial quantity) with other accused persons at the instance of co-accused Raju Bairagi from Madhya Pradesh to Hisar.

ii) Name of petitioner-accused Bagdi Bai disclosed by co-accused Raju Bairagi.

B) Incriminating evidences:

That petitioner-accused Bagdi Bai was found to be in constant touch with co-accused Raju Bairagi on his mobile no.89596xxxxx through mobile no. 78941xxxxx which is registered in the name of husband of petitioner. Call details record between petitioner-accused Bagdi Bai and co-accused Raju Bairagi is annexed herewith as Annexure R-5. Relevant call details is as under:-

Sr. No.	Mob. No. of co-accused Raju Bairagi	Mob. No. of petitioner-Bagdi Bai	Date	Remarks
1	89596xxxxx	78941xxxxx	26.04.2024	
2	89596xxxxx	78941xxxxx	06.05.2024	
3	89596xxxxx	78941xxxxx	09.05.2024	
4	89596xxxxx	78941xxxxx	15.05.2024	3 times
5	89596xxxxx	78941xxxxx	16.05.2024	
6	89596xxxxx	78941xxxxx	17.05.2024	2 times
7	89596xxxxx	78941xxxxx	19.05.2024	
8	89596xxxxx	78941xxxxx	23.05.2024	2 times
9	89596xxxxx	78941xxxxx	24.05.2024	3 times
10	89596xxxxx	78941xxxxx	25.05.2024	5 times
11	89596xxxxx	78941xxxxx	28.05.2024	
12	89596xxxxx	78941xxxxx	29.05.2024	5 times
13	89596xxxxx	78941xxxxx	30.05.2024	
14	89596xxxxx	78941xxxxx	01.06.2024	
15	89596xxxxx	78941xxxxx	02.06.2024	3 times
16	89596xxxxx	78941xxxxx	03.06.2024	7 times

REASONING:

7. 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.

8. 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.

9. In *State Vs. Pallulabid Ahmad Arimutta and Ors.*, 2022 INSC 26 [MANU/SC/0053/2022], a three-member bench of Hon'ble Supreme 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.

10. 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.

11. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offence 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

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.

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.

12. 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 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.

14. 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.

15. A perusal of the bail petition and the documents attached particularly call details which is unexplained on the part of petitioner 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.

16. 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.

17. 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.

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. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

13.05.2025
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Whether speaking/reasoned: Yes
Whether reportable: No