

CRM-M-10358-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10358-2025
Reserved on: 05.05.2025
Pronounced on: 16.05.2025

Ajay Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Aditya Anand, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
158	05.06.2023	Special Task Force, District STF Wing (SAS Nagar)	21(C), 25, 27A, 29 of NDPS Act and Sections 25/54/59 of Arms 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 of the case are being taken from the FIR annexed to the petition. On 05.06.2023 when the police party headed by ASI Surinder Kumar, Special Task Force Range Amritsar, were on patrolling on their vehicle and at that time they were having laptop and printer installed in the vehicle, searching for heroin traffickers. At about 11.30 am, they received a secret information that one Vishal @ Chitta son of Kuldeep Singh, R/o Lehndi Patti, Near Baba Lal Shah Place, Gehri Mandi, P.S. Jandiala, Amritsar Rural, has a large scale business of selling heroin since long and even on that day, he was transporting heroin on his black coloured bike Make Hero HD/Delux without number plate. The secret informer also told age of Vishal as 22 years and height 5'7", and other descriptions such as his clothes and him being clean shaven. Based on such information, police officials immediately reached by pass road, where they found a person with similar description on bike. On seeking the police party, the said boy tried to

CRM-M-10358-2025

whisk away along with bike. However police officials apprehended him along with bike. On an inquiry, he revealed his name as Vishal and subsequently, he was given option of search and lateron police recovered 330 grams of heroin from his possession. Subsequently he was arrested and FIR was registered. During the interrogation of said Vishal revealed involvement of Ajay (petitioner herein), Harpreet Singh @ Dana, Balwinder Singh @ Billan and Harpreet Singh @ Jagraj Happy and they were also nominated as accused. Vishal also disclosed to the investigator about purchase of 500 grams of heroin from petitioner-Ajay Singh. Consequently, the petitioner was arrested on 06.05.2023, under search of the house of petitioner, police recovered a polythene bag from an almirah, in which they found 3 kg 500 grams heroin and police also recovered a pistol and live cartridges from the said almirah.

4. The petitioner's counsel on instructions submits that petitioner shall not indulge himself in the offence involving commercial or intermediate quantity or the offence which falls under Sections 19/24/27A of NDPS Act and if he does so, he has no objection if State files an application for cancellation of bail. He further 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.

REASONING:

6. Petitioner's counsel seeks bail on the ground that petitioner was not in exclusive possession of the house from where contraband was recovered and mere presence of the petitioner in the said house would not lead to presumption about petitioner's knowledge about contraband recovered from an almirah found in the lobby of the house. This argument is mis-conceived . It is for the reason that after petitioner was arraigned as accused based on disclosure statement, at the time of his arrest from his house, police had recovered 3 kg 500 grams of heroin. The quantity involved is 14 times the commercial quantity. It's the petitioner's case that at the time of arrest, he had given an information about the person who was in possession over such almirah. Even petitioner's counsel does not dispute petitioner's presence at the home but states that it was the house where other family members were residing. The investigator did not find involvement of other family members and found involvement of petitioner. Needless to say that petitioner can always take the point of exclusive or conscious possession during the trial subject to cross-examination. However for the purpose of bail, based on silence of the petitioner about owner of such almirah more-so and the evidence of the investigator about petitioner's involvement and the heroin belonging to the petitioner, he is not entitled to bail on this point. It is clarified that this Court is dealing with the bail where evidence is yet to be recorded and certainly exclusive and conscious possession can be established only after the witness in this regard have been examined and evidence is analysed.

CRM-M-10358-2025

7. Petitioner's next point is that case property was compromised. Petitioner's counsel has referred to report of the Laboratory (Annexure P-5). He submits that articles which were received by the laboratory were GS and HS, whereas seal HS was never mentioned that whom does it belong to. It means case property was tampered with. Counsel for the State opposes this point and has referred to para 5 of the status report, which reads as follows:-

“ 5. That regarding the contention of the petitioner pertaining to the ‘HS’ seal mentioned along with ‘GS’ seal on parcel labelled a s‘Secret Drug sample’ in the FSL report dated 10.07.2023 (Annexure P-5) and the fact that upon opening the said parcel it was found to contain another yellow envelope sealed with two seals each of ‘GS’ and ‘SK’, it is submitted that it is a typographical error as no one with initials ‘HS’ was involved. The ‘GS’ seal belongs to Ld. JMIC Amritsar and the seal ‘SK’ belongs to the IO ASI Surinder Kumar.”

8. I have gone through the explanation offered by the State in para 5 of the status report and considering the massive quantity of heroin involved, this Court is not inclined to discard explanation without affording any opportunity to the State to explain this contradiction in the trial, as such without commenting on such contradiction by simply considering massive quantity of heroin which is 3 kg 500 gram, this Court refrains from taking any view contrary to the stand and explanation offered by the concerned DysP, in para 5 of the status report. Needless to say that it shall be permissible for the petitioner to raise this contradiction in the cross-examination of the concerned witness.

9. Petitioner also seeks bail on the ground of non-compliance of Section 42 of NDPS Act. It is submitted that grounds of belief are not written and no communication was sent immediately. However, this argument is also mis-conceived and it is for the reason that Section 42 of NDPS Act would come subject to the availability of the time of information and nabbing of the said accused. In this case, bare reading of the FIR point out that time of receipt of secret information was so less that there was hardly any time to comply with Section 42 of NDPS Act. After that FIR was sent and about how much time was available between the receipt of information and spotting of accused is subject to cross-examination and petitioner is not entitled to bail even on this ground.

10. Petitioner's next point is that his custody is 01 year, 09 months & 17 days as per custody certificate dated 01.04.2025, that means petitioner's present custody is 01 year & 11 months. Counsel for the petitioner did not cite any judicial precedent where Hon'ble Supreme Court of India had given bail after this much of custody and where the recovery is 3.5 kg of heroin. Needless to say that it shall be permissible for the petitioner to file bail petition by citing judicial precedents where the custody as well as quantity of heroin is similar or more than that and for the time being, petitioner is not entitled to bail.

11. 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

CRM-M-10358-2025

conditions put in place by the Legislature under Section 37 of the NDPS Act.

12. 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.

13. 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.

14. 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

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.

CRM-M-10358-2025

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.

15. The petitioner’s arguments did not point toward any material contradictions.

16. The submissions made above and 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.

17. Per the custody certificate, the petitioner's custody is 01 year, 09 months & 17 days which cannot be considered prolonged.

18. 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

CRM-M-10358-2025

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.

19. 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.

20. 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.

21. The petitioner's custody of around 01 year & 11 months cannot be termed prolonged, given the minimum sentence prescribed for the offense.

22. Any observation made hereinabove is neither an expression of opinion on the

CRM-M-10358-2025

case's merits nor shall the trial Court advert to these comments.

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

(ANOOP CHITKARA)
JUDGE

16.05.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.