

CRM-M-14991-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14991-2025
Reserved on: 02.05.2025
Pronounced on: 19.05.2025

Kuldeep Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Hardeep Singh, Advocate for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
43	18.08.2019	Tellewal, District Barnala	21, 22 of NDPS Act (Later on added Sections 27/29/61/85 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. Per paragraph 10 of the bail petition as well as para 11 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	334	28.08.2019	21, 22, 25, 29 of NDPS Act	City Barnala
2	374	2022	22, 29 of NDPS Act	Special Cell, Delhi

3. The facts and allegations are taken from the reply dated 27.04.2025 filed by the State. On 17.08.2019, police party headed by ASI Shrif Khan, CIA Barnala was present at Bus Stand, Ramgarh for patrolling and checking suspicious persons. At around 11PM, they received a secret information that Sikander Singh s/o Bikkar Singh deals in intoxicant tablets and now he is in possession of such contraband. Based on such information, the investigator complied with all the statutory requirements of the NDPS Act, 1985, and CrPC 1973. Thereafter, police recovered 950 intoxicant tablets, 23 bottles of ONEREX of two different batches and 70 bottles of WINCIREX, containing codeine phosphate and the said contraband was seized and the said Sikander Singh was arrested. The police also recovered mobile phone along with sim card from his possession. During the interrogation, Sikander Singh told the police that he had purchased the intoxicant

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bottles from Mohd. Shamshad and one Rashid, who are from Delhi. Based on such information, police made both of them as accused. Subsequently, the case was transferred to CIA, Barnala.

4. While conducting the investigation, in another FIR, police got to know that one Govind Singh also used to purchase tablets from Mohd. Shamshad and Rashid. Based on such information, when police had gone to arrest Mohd. Shamshad and Rashid, they noticed two persons loading cartons in a car and one box fell and clovidol tablets were visible. On being intercepted by the police party, they disclosed their names as Mohd. Shamshad and Rashid. Both of them were arrested and police recovered a massive quantity of tablets from them along with drug money.

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 petitioner and their family.

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

REASONING:

7. It shall be appropriate to refer to following portion of the reply, which reads as follows:-

“That during ongoing investigation, on the basis of disclosure disclosure statement u/s 27 Evidence Act, accused Mohd. Shamshad got recovered 5 lakh from his house and sarne were taken into possession on 29.08.2021 vide separate memo. S.I. Jasvir Singh, S.H.O., P.S., Tallewal, after verifying the facts of the case attested the case property and put his seal impression JS on the parcels as well as on specimen of seals. Report u/s 57 NDPS Act was prepared and sent to senior Officer.

On 30.08.2019, both the accused and case property i.e 8 parcels (as per detail given above) duly sealed with seals BS/JS along with specimen of seals were produced before Smt. Kulwinder Kaur Ld. JMIC, Barnala and the Ld. Magistrate, separated two/two (total 16 samples) representative sample containing 10 boxes of 50 strips each (total 5000 tablets) and 4 boxes (800 capsules) and 2 intoxicant bottles of representative samples and the same were signed and sealed with the seal of the Court bearing impression KK and the bulk parcels containing remaining material were also sealed with the seal of Court bearing impression KK. 5 samples (2500 tablets), 2 sample (400 capsules) and one intoxicant bottle were ordered to be deposited with the Laboratory and 4 days Police remand of both the accused was granted.

7. That during interrogation both the accused Mohammad. Shamshad and

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Rasid @ Soni disclosed that Kuldeep Kumar r/o Loni rural (Gaziabad) mobile No. 95405-xxxxx and 81307-xxxxx used to supply them intoxicant tablet, capsules and intoxicant bottles, he has a medical store at Loni, who used to supply the intoxicant tablet, capsules and intoxicant bottles to the different persons also at large scale. On the basis of said disclosure made by both the abovesaid accused, Kuldeep Kumar r/o Loni rural (Gaziabad) having mobile Numbers 95405-xxxxx and 81307-xxxxx nominated as accused in this case on 03.09.2019.”

8. After the above said investigation, petitioner was arraigned as accused.

9. Petitioner’s counsel seeks bail on parity with Shamshad Mohd. who was granted bail by this Court vide order dated 12.09.2023 passed in CRM-M-42575-2023. State opposes the bail on parity. In para 5 of the said order dated 12.09.2023, it is mentioned that petitioner (Shamshad) has undergone custody of four years, whereas in the present case as per custody certificate dated 01.05.2025, petitioner’s custody is only 07 months & 13 days and petitioner has one more case, in which his custody is 02 years, 04 months & 10 days. Therefore the petitioner is not entitled to bail on parity. It is not a case where the petitioner was arrested based on disclosure but there were call details between the petitioner and Shamshad Mohd. and Rashid @ Sonu, as such the petitioner is not entitled to bail on merits as well.

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. 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

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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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 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 petitioner's arguments did not point toward any material contradictions.

15. 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.

16. Per the custody certificate, the petitioner's custody is 07 months & 13 days which cannot be considered prolonged.

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17. 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.

18. 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.

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[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.

19. 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.

20. The petitioner's custody of around 08 months cannot be termed prolonged, given the minimum sentence prescribed for the offense.

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.

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

(ANOOP CHITKARA)
JUDGE

19.05.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.