

CRM-M-15404-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15404-2025
Reserved on: 05.05.2025
Pronounced on: 14.05.2025

Munna Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amit Kumar, Advocate for the petitioner.
Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
178	29.04.2023	Division No.7, Ludhiana	22/61/85 of NDPS Act (Section 29 of NDPS Act added later on)

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 11 of the bail petition as well as para 18(E) of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	166	15.07.2017	364A, 120B, 506, 34 IPC	Shimlapuri, District Ludhiana

3. The facts and allegations are taken from the reply filed by the State. On 29.04.2023 based on chance recovery, the Police seized 900 grams of narcotic substance (Alprazolam), digital weighing scale, 30 empty pouches, two mobile phones and 15 pouches of tobacco from the possession of accused Sunny, who later on named one Balwinder Singh and Rajesh Kumar and said Balwinder Singh named the petitioner as supplier and thereafter, petitioner was arraigned as accused. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. The petitioner's counsel on instructions submits that petitioner would not repeat the offence and would not indulge himself in the offence involving the commercial or

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intermediate quantity or the offence which falls under Sections 19/24/27A of NDPS act, Arms Act and also the offence where sentence is more than seven years. He further submits that if the petitioner involves in the above said offence, he has no objection if the State files application for cancellation of his bail. Counsel 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.

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

"Role of the petitioner:-

i) Co-accused Sunny was apprehended with 900 grams of intoxicating powder (Alprazolam 0.13%), a computerized weighing scale, 30 empty pouches, two mobile phones, and 15 pouches of tobacco. During his confession, he disclosed that he and the petitioner supplied narcotic substances by throwing taped parcels over the jail wall to Rajesh Kumar, confined in Central Jail, Ludhiana. In return, Rajesh Kumar made online payments to the petitioner, who then paid to co-accused Sunny.

ii) Based on the confession of the co-accused Sunny the present petitioner was nominated in the present case.

iii) Disclosure statement of the co-accused Rajesh.

iv) Disclosure statement of the petitioner in which the petitioner disclosed that he alongwith co-accused used to throw narcotic substance i.e. Zarda, Mobile thrown inside the jail and co-accused Rajesh used to collect those thrown parcels and after selling the same to the inmates in the jail used to send money to the petitioner through online transactions and the petitioner further give the said money to co-accused Sunny Binder and other persons."

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. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. 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 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 offence, and is not likely to commit any offence while on bail. If either of these two 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 that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such

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an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[31]. 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 subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

9. It would be appropriate to refer to the evidence collected against the petition, which is taken from the reply, which reads as follows:

“(C) Evidence against the petitioner:

i) Disclosure statement of co-accused Rajesh Kumar.

ii) Co-accused Rajesh Kumar disclosed that when he was confined in jail in a murder case, where, an undertrial, namely, Deepu got a deal of mine settled with a boy, namely, Sunny regarding bringing of narcotic substance from outside and several times, Sunny and Bindar had thrown narcotic substance inside the jail. On dated 29.04.2024, we put order to Sunny, Bindar and Munna for huge quantity of narcotic substance, tobacco zarda, mobile phone etc. and they had to throw the same from outside of jail across the wall and he had to collect the same, but they were nabbed. He used to make transfer of money to them through Munna and Munna, on making phone calls on his asking, used to further give the money to different persons knowing to his.

iii) Disclosure statement of the petitioner wherein the petitioner disclosed that he, in connivance with co-accused Sunny and Binder, was involved in throwing parcels containing narcotic substances, specifically Zarda, as well as mobile phones, into the premises of the jail and co-accused Rajesh used to collect the parcels and after selling the same to the inmates, Rajesh used to send money to the petitioner through online transactions. The petitioner further admitted that the money SO received was subsequently distributed by him to co-accused Sunny, Binder, and other persons.

iv) Screenshots were retrieved from the mobile phone of the petitioner. These screenshots contain records of financial transactions received by the petitioner through various online payment platforms.

v) Report of FSL.”

10. Thus, the evidence collected so far consists of disclosure statements and the

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petitioner's confession without discovering any facts. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of BSA, 2023.

11. In *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

12. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of co-accused. No other evidence is collected at this stage to connect the petitioner with the main accused. Thus, there is no justification to deny bail. Consequently, the petitioner has satisfied the first rider of section 37 of the NDPS Act. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

13. For now, the petitioner has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

14. As per paragraph 2 of the bail petition, the petitioner has been in custody since 13.09.2024. Per the custody certificate dated 04.05.2025 the petitioner's total custody in this FIR is 07 months & 17 days.

15. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

16. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, it is insufficient for bail.

17. Given the penal provisions invoked, the legal admissibility of evidence collected against the petition, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

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18. Without commenting on the case's merits, in the facts and circumstances unique and peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

CONDITIONS:

19. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

20. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

21. This order is subject to the petitioner’s complying with the following terms.
22. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.
23. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection squad and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days of release from prison and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from

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influencing the witnesses and repeating the offense.

24. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

25. In *Md. Tajiur Rahaman v. The State of West Bengal*, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon'ble Supreme Court holds in Para 7, "It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences."

26. This bail is conditional, and the foundational condition is that if the petitioner repeats the offence and indulges himself in the offence involving the commercial or intermediate quantity or the offence which falls under Sections 19/24/27A of NDPS act, Arms Act and also the offence where sentence is more than seven years, the State shall file an application for cancellation of this bail before the Trial Court, which shall be at liberty to cancel this bail.

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

28. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

29. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

14.05.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.