

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16532-2025
Reserved on: 10.09.2025
Pronounced on:18.09.2025

BABBU SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Parminder Singh Sekhon, Advocate for the petitioner.

Mr. Akshay Kumar, Asst. AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
38	08.02.2024	City Barnala, District Barnala	15/25/29 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 14 of the bail petition and para 8 of the status report, the petitioner has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 08-02-2024, the Police had seized 600 kgs of poppy straw from a truck and a car and petitioner was found sitting on the driver's seat of the car. 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. Petitioner's counsel on instructions submits he has no objection if while granting bail, this Court imposes any stringent conditions and undertakes that petitioner shall not indulge himself in the offence involving the commercial or intermediate quantity or the offence which falls under Section 19/24/27A of NDPS Act. He further submits that if the petitioner involves himself in the said offences, where the sentence imposed is more than

07 years, he has no objection if the State files application for cancellation of his bail.

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

7. It shall be relevant to refer to paragraphs 5 to 7 of the status report which read as follows:

*"5. **The evidence based on which the petitioner was arraigned as an accused:** That the present petitioner was arrested on 08.02.2024 along-with Truck bearing registration No. PB-13AL-8838 (14 tyre) and Swift car bearing registration no. HR-26CD-4353 from Jail Bypass on Moga Barnala highway. The present petitioner was on the driver seat of the said Swift Car which was parked behind the above stated truck. That four bags of 'Poppy Husk' was recovered the back seat of said swift car. The allegations against the present petitioner are well founded and also grave and serious in nature as he used to supply the poppy husk to co accused Paramjit Singh @ Pamma. The FSL report. further verified the highly intoxicating drug i.e. "Meconic acid Morphine, Codeine, Thebaine. Papaverine and Narcotine found in the recovered contraband from present petitioner, hence stringent provisions of Section 37 of the Narcotic Drugs & Psychotropic Substances Act are applicable in the present case. The scale of this recovery speaks of a systematic and structured cartel in which the petitioner was neither a novice nor an occasional associate, but an active and deliberate participant whose role was indispensable to the cartel's functioning.*

*6. **The evidence against the petitioner:** That following points elaborate the evidence against the present petitioner in the present case:*

*a. **Direct Recovery:** That a total of 600 Kg of Poppy Husk was recovered under his conscious possession from on date 08.02.2024 from Truck bearing registration No. PB-13AL-8838 (14 tyre) and Swift car bearing registration no. HR-26CD- 4353 which was driven by the present petitioner.*

*b. **Corroborated Nominations:** That during investigation it was established that present petitioner used to buy poppy husk at Rs 2000/-per Kg from co accused Manjit Singh and Tarsem Singh and further sell it for 2800/- per kg to co accused. Paramjit Singh @Pamma. The present petitioner got nominated Paramjit Singh @ Pamma. Further the accused corroborated in their statements the pattern of organized crime of immense magnitude.*

*c . **Forensic Confirmation:** The above stated FSL report conclusively establishes the contraband nature of the recovered substances.*

*d. **Chain of Disclosures:** Each disclosure emanating from the petitioner and co-accused elaborates the pattern of offence.*

e. **Link with Organized Crime:** His role is not limited to possession but extends to facilitation of transport, storage, and distribution.

7. **The role of the petitioner:** It is respectfully submitted that the present petitioner was arrested on 08.02.2024 along-with Truck bearing registration No. PB-13AL-8838 (14 tyre) and Swift car bearing registration no. HR-26CD-4353 from Jail Bypass on Moga Barnala highway. The present petitioner was on the driver seat of the said Swift Car which was parked behind the truck. That four bags of 'Poppy Husk' was recovered the back seat of said swift car. ***That during investigation the present petitioner suffered disclosure statement to the effect that he along with co accused Sandeep Singh received the consignment of poppy husk from co accused Manjit Singh and Tarsem Singh who further brought it from Chola district of Jharkhand. That he was to store the poppy husk and his house and thereafter he along with co accused were to retail it and to divide their respective share of profit. That co accused Manjit Singh used to sell poppy husk for Rs 2000/- per kg to present petitioner who who further retail it for Rs.2800/- per kg to co accused Paramiit Singh. That FSL report declared commercial quantity of poppy husk, hence attracting the bar under Section 37 of the NDPS Act. The nature and quantity of the contraband recovered, prima facie establish the petitioner's active and deliberate involvement in the offence. During further investigation, credible evidence has emerged revealing that the petitioner is a key link in a well-organized inter-state drug trafficking network engaged in the illegal procurement, transportation, and distribution of poppy husk. Granting bail at this stage pose a serious threat to the larger public interest, as the petitioner's release may facilitate tampering with evidence or influencing co-accused and witnesses. Hence, the present case falls within the category of grave offences, and no grounds for grant of bail are made out. That the petitioner consciously became part of organized crime racket which handles large level of drug trafficking. That the petitioner was arrested along with 600 kg of poppy husk. That the recoveries, corroborations, and disclosures collectively leave no manner of doubt that the petitioner's role is not peripheral but central, deliberate, and conscious, making him a vital link in a cartel that thrives on the illicit circulation of narcotics. Therefore, the present petitioner was a very important link the totality of circumstances, the petitioner emerges as a principal conspirator and facilitator in a crime of the gravest order- namely, the organized trafficking of commercial quantities of psychotropic substances. The material on record not only establishes his guilt but also warns against the grave consequences of his release at this stage. Thus, it is humbly***

suppllicated that present petitioner does not deserves any leniency from this Hon'ble Court.”

REASONING:

8. As per paragraph 4 of the reply, the name of the contraband is poppy husk and its weight is 600 kg.
9. Dealing in 600 kg of poppy husk in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Poppy straw
Quantity detained	600 Kg
Punishable U/s	S.15(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	1200.00%

Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
Sr. No.	110	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Poppy straw	
Other non-proprietary name	*****	
Chemical Name	*****	
Small Quantity	< 1000 Gram (i.e. equivalent to 1 Kg)	
Commercial Quantity	> 50000 Gram (i.e. equivalent to 50 Kg)	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985
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Notification No. & dated	S.15 & S.2(xviii) NDPS Act, S.O.821(E)	11/14/1985
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Sr. No.	S.2(xviii)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom; S. 2(viii b)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances; S.2 (xvii) “opium poppy” means— (a) the plant of the species <i>Papaver somniferum</i> L; and (b) the plant of any other species of <i>Papaver</i> from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act; S2. (xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

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 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

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.

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. 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. 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. The petitioner's custody of around 01 year and 07 months cannot be termed prolonged, given the minimum sentence prescribed for the offense, which is 10 years.

20. Regarding the delay in the trial, if the trial does not conclude within one year and ten months of the petitioner's custody, and the delay is not attributable to the petitioner, the petitioner may apply for bail before the trial Court. The Court shall not be influenced by the dismissal of bail on merits or by criminal history and shall decide it on changed

CRM-M-16532-2025

circumstances and the prolonged trial.

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

18.09, 2025

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Whether speaking/reasoned: Yes

Whether reportable: No.