

CRM-M-17350-2025
Date of decision:28.04.2025

...PETITIONER

VERSUS

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vishavjeet Gill, Advocate for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

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ANOOP CHITKARA, J. (ORAL)

FIR No.	Dated	Police Station	Sections
348	14.11.2024	Kalayath, District Kaithal, Haryana	15(c) of NDPS Act, 1985

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. Per paragraph 5 of the bail application and in para 9 of the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	297	20.08.2022	15(C) of NDPS Act	Sadar Narwana

3. The facts and allegations are taken from the reply filed by the State, which reads as under:-

“xxx xxx xxx xxx

2. That the brief facts of the case is that on 13.11.2024, a police party in a government vehicle with registration number HR-08-GV-1502 was patrolling from Titram Mor, Kaithal, Mator, and passing through the village Badsikri Khurd towards Balou Road. At time, secret information was received that Gurmel s/o Harikesh, resident of Mohal Kheda, whose mobile number is 90509-26100, and Monu, resident of Narwana, whose mobile number is 99920-42669, were transporting a large quantity of opium (Doda Post) in a white Fortuner vehicle No. HR51-AJ-7636 from Bhuna, Uklana, Dattasinghwala, Narwana, and supplying it in the Kaithal area. The person also mentioned that Gurmel and Monu would be arriving from Balu to Badsikri Khurd via the road and that if a check-post or surveillance was set up, they could be caught. As the information was credible and from a trusted source, ASI Jasmer Singh, after preparing a notice under Section 42 NDPS ACT, sent EHC Sandeep Kumar No. 164/Kaithal to inform the Kaithal police station. Afterward, ASI Jasmer Singh, informing his

colleagues, headed towards Badsikri village from the Balu side where they noticed a vehicle coming from Balu side. ASI Jasmer Singh gave a signal to stop the vehicle. The driver and another individual jumped out of the vehicle and, taking advantage of the fog, ran towards the fields, shouting that run out Gurmel, police had arrived. Despite chasing them through the fields, they managed to escape due to the thick fog. Returning to the vehicle, ASI Jasmer Singh checked the vehicle number, HR51-AJ-7636, and found it to be a white Fortuner. Upon searching the vehicle, 10 black-colored, heavy bags tied up at the rear seat and a Nokia mobile were recovered from the vehicle. The bags were checked, and each contained (Doda Post), which was then weighed on an electronic scale. The weight of the sacks was as follows:

1. Sack A: 20 kg 80 grams
2. Sack B: 20 kg 140 grams
3. Sack C: 20 kg 110 grams
4. Sack D: 20 kg 80 grams
5. Sack E: 20 kg 30 grams
6. Sack F: 20 kg 150 grams
7. Sack G: 20 kg 50 grams
8. Sack H: 20 kg
9. Sack I: 20 kg 110 grams
10. Sack J: 20 kg 50 grams

The sacks were sealed and stamped with ASI Jasmer Singh's PK mark. Samples were also sealed and stamped with PK. The vehicle's RC was checked and matched the vehicle, and a Nokia mobile phone found in the vehicle contained a SIM card with the number 90509-36830. After checking the phone's number, it was found that it belonged to Gurmel Singh (Present petitioner). A video of the entire process was taken by ASI Jasmer Singh. The recovered items (10 sacks of Doda post), weighing a total of 200 kg 800 grams, the Fortuner vehicle, the RC of the vehicle, the Nokia mobile phone, and its SIM card) were properly sealed."

4. Counsel for the petitioner submits that petitioner has been falsely implicated in the present case and nothing is to be recovered from him and he has no relation with the alleged offence. 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 his 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:

"That regarding the role of the petitioner it is submitted that the name of the petitioner was disclosed by the secret informer that petitioner and co-accused Monu is coming in a vehicle having heavy quantity of Doda Post, on this information when the police attempted to stop the vehicle, Gurmel Singh (petitioner) and another individual abandoned it and fled the scene, taking advantage of the thick fog to escape. During the investigation, it was revealed that the offending vehicle, HR51AJ-7636, was ultimately owned by Gurmel Singh after being resold through multiple transactions.

Additionally, a Nokia mobile phone recovered from the vehicle was found to be registered in Gurmel Singh's name, and call detail records (CDR) placed his mobile number 9050936830 near the crime scene at the time of the offense. Further analysis of the second mobile number 9050926100 of Gurmel Singh the location of that sim was also found near the place of occurrence. These findings, along with the substantial drug seizure from the vehicle, implicate Gurmel Singh (present petitioner) in the transportation and distribution of the Doda Post. The custodial interrogation of the petitioner is necessary to disclose the main supplier of the huge quantity of Doda Post.”

REASONING:

7. The quantity allegedly involved in this case is commercial and the petitioner is habitual offender and petitioner's mobile location was found near the place of the occurrence. Given this, the rigors of S. 37 of the NDPS Act, the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

8. Given the above, the petitioner has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

9. The quantity of contraband that was seized falls in the commercial category. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences 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 offence and is not likely to commit any offence 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 offence punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

10. 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

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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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.

11. 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. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.

12. The quantity involved is commercial, and the burden to satisfy the rigor of condition of Section 37 of the NDPS Act was on the petitioner, which he did not discharge to the satisfaction of the statutory requirements. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for anticipatory bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

13. The learned Special Judge, while dismissing the anticipatory bail of the petitioner, has given elaborative reasons and considered almost every aspect.

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.

15. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon’ble Supreme Court holds,

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[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

16. 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.

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

18. Petition dismissed. Interim orders are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

28.04. 2025

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Whether speaking/reasoned: Yes

Whether reportable: No.