

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17704-2025
Reserved on: 03.07.2025
Pronounced on: 23.07.2025

Shivam Diwan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhishek Singla, Advocate,
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
20	22.02.2025	Ranjit Avenue, District Amritsar	22, 29, 61 & 81 of NDPS Act

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. As per paragraph 15 of the bail petition the petitioner declared that he has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	67	21.05.2022	22, 25, 27-A, 29/61/85 of NDPS Act read with 25, 27 of Arms Act	Sultanwind, Amritsar

3. The facts and allegations are taken from the status report filed by the State. On 22.02.2025, based on chance recovery, the Police seized 70 strips containing 700 intoxicating tablets of Tramadol Hydrochloride from the possession of co-accused Sukhraj Singh @ Gori and Anhad Parkash. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023. During custodial interrogation, the main accused, Sukhraj Singh @ Gori and Anhad Parkash, confessed before the Police officer that they had purchased the drugs from the petitioner and one Manpreet Singh. Thereafter, co-accused Manpreet Singh was also arrested and 1350 intoxicant injection of Tramadol Hydrochloride, 200 intoxicant injection of NRX Pentazocine, 2600 intoxicant tablets of Alprazolam, 2500 intoxicant tablets of NRX Tramadol Hydrochloride and 360 intoxicant tablets of Clovedool 100 SR were recovered

from him. The co-accused Manpreet Singh made disclosure statement that he alongwith his partner Shivam (present petitioner) is running a medical store under the name & style of DM Medical Store and they both under the garb of medical store are selling intoxicant tablets and injection in huge quantity. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

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 his family.

5. The State's counsel opposes bail and refers to the status report.

6. It would be appropriate to refer to the following portions of the status report, which reads as follows:

“THE EVIDENCE BASED ON WHICH THE PETITIONER WAS ARRAIGNED AS AN ACCUSED

14. That it is submitted that the present petitioner Shivam Diwan was nominated on the basis of disclosure statements suffered by the co-accused persons namely Sukhraj Singh @ Gori, Anhad Parkash and Manpreet Singh wherein they all disclosed that the present petitioner Shiva Diwan along with co-accused Manpreet Singh is running a medical store i.e. DM Medical Store and under the garb of the medical store they both were selling intoxicant tablets and injections. The above recovered intoxicant tablets and injections were provided to the co-accused persons by the present petitioner Shivam Diwan.

THE EVIDENCE AGAINST THE PETITIONER.

15. That it is submitted that the prosecution evidence against the present petitioner Shivam Diwan is primarily based on the disclosure statements suffered by the co-accused persons namely Sukhraj Singh@ Gori, Anhad Parkash and Manpreet Singh wherein they all disclosed that the present petitioner Shiva Diwan along with co-accused Manpreet Singh is running a medical store i.e. DM Medical Store and under the garb of the medical store they both were selling intoxicant tablets and injections. The above recovered intoxicant tablets and injections were provided to the co-accused persons by the present petitioner Shivam Diwan.

THE ROLE OF THE PETITIONER

16. That it is submitted that the present petitioner Shivam Diwan under garb of running a medical store, was selling intoxicant tablets and injections illegally and the above mentioned entire intoxicant tablets and injections recovered in this case from the co-accused persons Sukhraj Singh@ Gori, Anhad Parkash and Manpreet Singh were taken from the present petitioner Shivam Diwan.”

REASONING:

7. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act and the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

8. The petitioner fails to explain his connection with the co-accused except the business and has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

9. 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 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.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

- (a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [*Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Para 6].
- (b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [*Customs, New Delhi v. AhmadalievaNodira*, (2004) 3 SCC 549, Para 7].
- (c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [*UOI v. Prateek Shukla*, 2021:INSC:165 [Para 11], (2021) 5 SCC 430, Para 12].
- (d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [*Union of India v. Niyazuddin SK &Anr*, 2017:INSC:686 [Para 7], (2018) 13 SCC 738, Para 7].
- (e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [*N.R. Mon v. Md. Nasimuddin*, (2008) 6 SCC 721, Para 9].
- (f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the

accused is not guilty of the alleged offence. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[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.

10. 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.

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

12. **Petition dismissed.** Interim order dated 01.04.2025 is recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

23.07.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.