

CRM-M-19032-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19032-2025
Reserved on: 01.10.2025
Pronounced on: 28.10.2025

Sukhchain Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.S. Killianwali, Advocate
for the petitioner.

Ms. Pooja Nayar Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
79	09.08.2024	Sadar Patti, District Tarn Taran	21(c) of NDPSact (Section 29 of NDPS act added later on)

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 19 of the bail petition and reply dated 26.04.2025, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	88	05.08.2024	21(b) of NDPS act	Khemkaran

3. The facts and allegations are taken from the first status report dated 26-04-2025, filed by the DySP, Sub-Div Patti, Tarn Taran, Punjab. On 09-08-2024, a chance recovery, the Police had seized 351 grams of heroin from the possession of the main accused Subhash Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985 and BNSS 2023.

4. During custodial interrogation, the main accused, Subhash Singh, disclosed that he was supplied this heroin by Gorkha Singh alias Gora, for handing it over to Lovepreet Singh, and he was to be paid Rs. 20,000/- for the job. Based on this, Gorkha Singh was arraigned as an accused, who was interrogated, and he disclosed that he had engaged the services of Subhash on the asking of the petitioner. Based on this, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the

CRM-M-19032-2025

Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

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. As per paragraph 8 of the first status report dated 26-04-2025, filed by the DySP, Sub-Div Patti, Tarn Taran, Punjab, the contraband is 351 grams of heroin “Diacetylmorphine”.

8. Dealing in 351 grams of heroin “Diacetylmorphine” in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	351 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	140.40%

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.	56	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin	
Other non-proprietary name	*****	
Chemical Name	Diacetylmorphine	
Small Quantity	< 5 Gram	

CRM-M-19032-2025

Commercial Quantity	> 250 Gram	
0		
Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)	11/14/1985

Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one mililitre of substance, if liquid, is contained in every one hundred mililitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

9. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act.

10. In State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991, wherein the Hon’ble Supreme Court holds,

- [8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.
- [9]. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

11. The quantity of heroin 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.

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. After considering the evidence as reflected in the first status report dated 26-04-2025, filed by the DySP, Sub-Div Patti, Tarn Taran, Punjab, this Court, by order dated 01-05-2025, had stayed the petitioner's arrest and directed further investigation on the aspects as mentioned in the said order and the petitioner was directed to join investigation.

14. After that the second status report dated 07-07-2025, was filed by the DySP, Sub-Div Patti, Tarn Taran, Punjab, and as per which as per para 6, cryptic details were given.

15. The DySP, Sub-Div Patti, Tarn Taran, Punjab, filed the third status report dated 18-

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.

CRM-M-19032-2025

08-2025, and as per paragraphs 5 & 6, the evidence collected was shown as disclosure statement of the co-accused.

16. By order dated 09-09-2025, this Court directed the Senior Superintendent of Police to file fresh status report and directed the petitioner to join investigation again.

17. It shall be relevant to refer to the fourth status report, and this time, filed by the Senior Superintendent of Police, and paragraphs 3 to 5, which read as follows:

“3. That the above-said order dated 09.09.2025 passed by this Hon'ble Court was received in the office of the deponent and the deponent called for the fact-finding report from the Superintendent of Police (Investigation), Tarn Taran and on the basis of the aforesaid fact-finding report as well as the record, the present status report is being filed by the deponent Taron

4. That as per the record, FIR No. 79 dated 09.08.2024, under Section 21(C), 29, NDPS Act, Police Station Sadar Patti, District Tarn Taran was registered on the statement of SI Sukhdev Singh against 1) Subhash Singh.

During the investigation, 2) Sukhchain Singh, 3) Gorkha Singh @ Gora and 3) Lovepreet Singh were nominated in the present FIR No. 79 (Supra) on the disclosure statement of the co-accused Gorakha Singh @ Gora, the present petitioner was nominated in the FIR No.79 (Supra) and Section 29 NDPS Act was added.

5. That this Hon'ble Court vide order dated 09.09.2025, raised specific queries and also directed for further investigation, the queries and replies to the queries raised by this Hon'ble Court are stated herein below for the kind perusal of the this Hon'ble Court:-

A. Call details.

Reply:

That the mobile number 73076xxxxx of the present petitioner was sent to the technical team for obtaining the CDRs, upon analyzing the CDR of the present petitioner, the CDR of the petitioner was scrutinized and it has been found that the petitioner from his mobile No. 73076xxxxx has made phone calls on 99141xxxxx used by co-accused Gorkha Singh @ Gora. There are total 218 calls made between both of them, out of which 79 hrs outgoing calls from the mobile number of the petitioner and 137 incoming calls from the mobile of co-accused Gorkha Singh @ Gora on the mobile of the petitioner for the time period 21.12.2023 till 03.08.2024.

B. Financial transactions**Reply:**

That the information in regard to the financial transaction was obtained by way of the passbook of one account of State Bank of Patiala bearing account No. 65109796355, in which no recent transaction has been found and there is no amount in the said account.x

C. Tower location**Reply:**

That the tower location in the present case was applied/requested from the service provider and however, the CDR that has been provided, the tower location is not being shown due to some technical reason.

D. Connections with the co-accused**Reply:**

That the present petitioner is nominated in the FIR No. 79 (Supra) on the basis of the disclosure statement suffered by the co-accused namely Gorkha Singh @ Gora and in the present case commercial quantity of heroin i.e. 351 grams of heroin was recovered from the possession of the co-accused namely Subhash Singh. It is pertinent to mention here that this Hon'ble Court vide order dated 01.05.2025 has directed the present petitioner to join the investigation before the investigating agency, but till today the present petitioner has failed to join the investigation and is not cooperating with the investigating agency. As per disclosure statement of Gorakha Singh @ Gora, he took the envelope containing the contraband and gave it to the person as per instructions of Sukhchain Singh. Thus, this makes it clear that Sukhchain Singh supplied/handed over the contraband to Gorkha Singh @ Gora.

In the light of the aforementioned circumstances, the present petitioner does not deserve any concession/relief of anticipatory bail from this Hon'ble Court.

E. Evidence from people in the vicinity**Reply:**

That the statements were recorded of respectable persons of the village Khemkaran, namely Kartar Singh and Parkash Kaur in regard to obtain

CRM-M-19032-2025

the information of the present petitioner; they have stated that the present petitioner was in touch with Gorkha Singh @ Gora and Gorkha Singh @ Gora used to come and work and stay with the petitioner.

F. Evidence from the Social media connections, etc

Reply:

That as per the information received from technical cell of District Police, it has been found that the petitioner was not using social media accounts i.e. Facebook and Instagram. Therefore, no further information in this regard could be found.”

18. A perusal of paragraph 4-A points out towards call details and as per Para 4-D, **the petitioner did not join investigation.**

19. A perusal of the bail petition does not prima facie satisfy the rigors of S. 37 of the NDPS Act, and since the quantity is commercial, the burden was on the petitioner to do so. As far as the Investigating Agency is concerned, they have collected digital evidence through call details linking the chain to the petitioner.

20. 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.

21. The quantity involved is commercial, and the burden to satisfy the rigor of

CRM-M-19032-2025

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.

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

23. 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.

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

[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].

25. 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.

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

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

(ANOOP CHITKARA)
JUDGE

28.10.2025

anju rani

Whether speaking/reasoned: Yes

Whether reportable: No.