

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19698-2025
Reserved on: 08.07.2025
Pronounced on: 22.07.2025

Nirmal Singh @ Nimma @ Nirmal Atwal ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Puneet Kumar Bansal, Advocate,
for the petitioner.

Ms. Pooja Nayar Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
92	15.06.2024	Special Task Force, District SAS Nagar	22 of NDPS Act (Sections 21 & 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. As per paragraph 9 of the bail application and as per paragraph 9 E of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	161	08.09.2012	457, 380 IPC	City Dhuri, District Sangrur
2.	121	18.08.2012	457, 380 IPC	Makhu, Distt. Ferozepur
3.	25	23.07.2025	379, 398, 411 IPC, Section 25 of Arms Act	Cantt Ferozepur
4.	240	18.08.2014	379, 411 IPC	City Ferozepur, District Ferozepur
5.	307	14.10.2014	399, 402, 411, 413, 493 IPC, Section 25 of Arms Act	Sadar Ferozepur
6.	1	01.01.2017	399, 402 IPC, Sections 25, 54, 59 of Arms Act, Section 21 of NDPS Act	Rawal Pindi District Kapurthala
7.	239	16.06.2020	307, 148, 149 IPC, 25 of Arms Act	Goindwal Sahib
8.	88	14.04.2017	457, 380 IPC	City Fazilka, District Fazilka
9.	140	14.12.2016	382 IPC	Kulgarhi, District Ferozepur
10.	122	21.10.2016	457, 380 IPC	Kulghari, District Ferozepur
11.	70	20.10.2016	457, 380, 427, 511 IPC	Behram, Distt. SBS Nagar
12.	204	02.09.2016	457, 380, 427, 201 IPC	Chhjeharta, District Amritsar

13.	159	14.07.2016	394 IPC	Panchdhara, District Barmer (Rajasthan)
14.	84	20.06.2016	457, 380 IPC	Sadar Zira, District Ferozepur
15.	151	2016	457, 380 IPC	Sultanwind, District Amritsar
16.	48	09.10.2012	457, 380, 411 IPC	Chhiana, District Barnala
17.	19	25.05.2013	457, 380 IPC	Chhiana, District Barnala
18.	133	10.08.2014	379, 411 IPC	Cantt. Ferozepur, Distt. Ferozepur
19.	118	27.08.2014	380, 457 IPC	Sadar Moga, Distt. Moga
20.	103	07.09.2014	395, 201, 450, 34 IPC	Rajasansi, Distt. Rural Amritsar
21.	182	20.09.2015	457, 380 IPC	Sadar Jalandhar, Distt. Jalandhar
22.	32	16.03.2022	21-C, 27-A, 29 of NDPS Act	Mohkampura, Distt. Amritsar
23.	309	29.08.2024	52-A of Prison Act	Goindwal Sahib

3. The facts and allegations are taken from the status report filed by the State. On 15.06.2024, based on secret information, the police had recovered 354 grams of heroin from the house of co-accused Nachattar Singh. The laboratory also tested it as Diacetylmorphine (heroin). During interrogation, the petitioner was arraigned as an accused because of the telephonic conversation which he had made from jail. It would be appropriate to refer to para 7 of the status report, which reads as follows:

“7. That during investigation co-accused Nachattar got recorded his disclosure statement under Section 23 of BSA dated 25.08.2024 that his brother Nirmal (petitioner) who was lodged in Goindwal Jail at the time and had a mobile phone with him, in which number 79019-xxxx was operational. Nirmal used to contact the smugglers and sent Heroin through unknown persons to Nachattar, which he used to supply further to the customers. Nachattar further stated that he had hidden about 350 gm Heroin in his almirah in the bedroom. When the police had conducted raid on 15.06.2024 he had run away. He had been talking to his brother (petitioner) through his mobile No.98543xxxx. That the Heroin recovered from his house belonged to his brother Nirmal petitioner).”

4. Petitioner’s counsel submits that no recovery has been effected from the petitioner and the evidence against him is in the shape of disclosure statement which is legally inadmissible. He seeks bail on custody which has been contradicted by the custody certificate because the petitioner was not in custody in the present case but in some other case.

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 his family.

6. The State’s counsel opposes bail and refers to the status report.

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

“9. That during investigation the mobile location and CDRs of the sim number 76528xxxx being used by the petitioner inside the jail was obtained and it was verified that the same was being used by the petitioner from inside the jail and it was also verified that the same number was used by him to contact his brother/co-accused Nachattar.

A. xxx xxx

*B. Evidence based on which the petitioner was arraigned as an accused
The petitioner was arraigned as accused on the basis of disclosure statement of his brother/co-accused Nachattar who stated that the petitioner who was lodged in Central Jail, Goindwal Sahib, used to connect with drug smugglers and get the Heroin delivered through unknown persons to Nachatter. The said Heroin was then sold by Nachattar to his customers.*

C. The evidence against the petitioner

That the petitioner was arrested from Central Jail Goindwal Sahib on 29.08.2024 and one mobile phone was recovered from his personal possession, as detailed above. The call detail record of the petitioner and his brother were then obtained and 25 calls from 28.04.2024 to 14.06.2024 were found to have been made between them.

D. Role of the petitioner

That the petitioner was contacting drug smugglers inside the jail and running a drug dealing business with his brother/co-accused Nachattar. The petitioner used to get the Heroin delivered to his brother who then used to sell it further, all while lodged in Central Jail, Goindwal Sahib.”

REASONING:

8. It is clearly mentioned in the status report about the telephonic conversation between the petitioner and his brother. This is fortified by the previous criminal antecedents, the petitioner is facing multiple criminal cases including one under the NDPS Act i.e. FIR No.32 dated 16.03.2022 and as per the reply, he was convicted in that case on 15.11.2023. Moreover, since the petitioner has multiple criminal cases so the custody has not been counted in the present case but in the old continuing FIRs, as such, petitioner is not at all entitled to bail on custody.

9. 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.

10. The petitioner’s counsel argued that the call details cannot be relied upon at the bail stage, and if the said evidence is ignored, then there is only the inadmissible evidence of the disclosure statement.

11. In State Vs. Pallulabid Ahmad Arimutta and Ors., 2022 INSC 26 [MANU/SC/0053/2022], a three-member bench of Hon'ble Supre Court holds as follows:

[10] It has been held in clear terms in Tofan Singh v. State of Tamil Nadu MANU/SC/0797/2020 : (2021) 4 SCC 1, that a confessional statement recorded Under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the Petitioner- NCB, on the basis of the confession/voluntary

statements of the Respondents or the co-Accused Under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the Accused or the allegations of tampering of evidence on the part of one of the Respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the Petitioner-NCB seeking cancellation of bail granted to the respective Respondents, are dismissed as meritless.

12. A perusal of the abovementioned order points out that while dealing with a challenge to bail, the Hon'ble Supreme Court did not consider the call details as evidence to cancel the bail. However, no specific directions were issued to Courts subordinate to the Hon'ble Supreme Court to ignore call details as evidence while considering bails.

13. 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.

14. 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

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.

Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

15. 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.

16. 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.

17. 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 not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

18. 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.

19. 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.

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

21. **Petition dismissed.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

22.07.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.