



CRM-M-19657-2025

1

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

223

CRM-M-19657-2025 (O&M)

Date of Decision: 22.04.2025

Daljit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**Present:** Mr. Ashok Giri, Advocate for the petitioner.

Mr. S.S.Chahal, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of pre-arrest bail to the petitioner in FIR No.13 dated 10.01.2025, under Section 21(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') [Sections 29 of NDPS Act added later on], registered at Police Station ANTF SAS Nagar, Mohali (STF).

2. Allegations are that 5 Kgs 63 grams of *heroin* was recovered from main accused-Ravi Singh and petitioner was nominated on the basis of disclosure made by him.

3. Status report by way of affidavit dated 21.04.2025 of Mr. Yogesh Kumar, PPS, Deputy Superintendent of Police, Anti-Narcotics Task Force, Jalandhar Range, Jalandhar on behalf of respondent has been filed and the same is taken on record. Copy supplied to the other side.

Registry to tag the same at appropriate place.

4. Contends that petitioner was not named in the FIR; rather he has



CRM-M-19657-2025

2

been nominated on the basis of disclosure made by main accused, namely, Ravi Singh from whom recovery of 5 Kgs 63 grams *heroin* is alleged to have been made. Further contends that petitioner is falsely implicated in the present case, inasmuch as he does not know the whereabouts of Ravi Singh; nor he has any relation with him. Again contends that in view of the judgment of Hon'ble the Supreme Court passed in case titled as ***Tofan Singh versus State of Tamil Nadu, SCC (2021) 4 SCC 1*** mere disclosure would not be the basis to fasten any criminal liability upon the petitioner, as the disclosure has no evidentiary value in the eyes of law. He has also relied upon the order dated 03.03.2025 passed by this Court in CRM-M-36652-2024 (***Gurbir Singh versus Union of India***) whereby concession of pre-arrest bail was granted to one Gurbir Singh in case bearing NCB Crime No.03 dated 31.01.2024, under Sections 21, 22, 23, 25, 27-A, 29 and 60 of NDPS Act, registered at Police Station NCB Amritsar, District Amritsar.

5. *Per contra*, learned State counsel while opposing the prayer, submits that though, petitioner was not named in the FIR, but he has actively participated in the commission of crime along with the main accused. Further submits that name of petitioner surfaced on the basis of disclosure made by Ravi Singh. Thus, his custodial interrogation is very much necessary to know the true facts of the case as well as *modus operandi* adopted by the accused.

6. Heard learned counsel for the parties and perused the paper-book.

7. It transpires that petitioner was not named in the FIR; rather nominated on the basis of disclosure made by main accused-Ravi Singh. The alleged contraband was smuggled from Pakistan while using Drone and the contraband was kept in a kit bag which had been recovered by the



Investigating Agency from co-accused Ravi Singh.

8. Before proceeding further, it is relevant to extract the provisions of Section 37 of the NDPS Act and the same read as under:-

Section 37 of the NDPS Act – 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.”

9. Aforesaid Section, is in the nature of non-obstante clause to Cr.P.C, including Section 439 thereof (now BNSS) and which, *inter alia*, lays down that no person accused of an offence involving commercial quantity shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and not likely to commit any offence while on bail.

10. Both the above conditions are cumulative and not alternative. The law is well settled that requirement of satisfaction in terms of Section 37



CRM-M-19657-2025

4

(1)(b)(ii) (*ibid*) regarding the accused being not guilty is to be recorded on the basis of reasonable grounds and that should be more than *prima facie*.

11. The twin-test stipulated under Section 37 of the NDPS Act was considered by Hon'ble the Supreme Court in '***Union of India Versus Rattan Malik Alias Habul***', (2009) 2 SCC 624 and para Nos.12 & 13 being relevant read as under:-

"12. It is plain from a bare reading of the non-obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari). Thus, recording of satisfaction on both the



aspects, noted above, is sine qua non for granting of bail under the NDPS Act.”

12. Apart that, the menace of drugs has completely ruined the State of Punjab and which needs to be dealt with sternly. Hon'ble the Supreme Court in ***Parwinder Singh @ Parminder Kumar @ Vicky Vs. State of Punjab***, SLP (Crl.) 12601-2023, decided on 14.12.2023, has held as under:-

“5. Having heard learned counsel for the parties, we are of the considered view that the parameters of granting bail in a case under special statutes like NDPS Act may not be liberally construed in the instant case. We say so taking notice of the fact that the State of Punjab is reeling under the grip of drug menace. There are several drug lords whose roots are identifiable in the State of Punjab, and who operate in the cross-border drug racketing and organized trafficking of narcotic drugs and psychotropic substances. It is a matter of common knowledge that huge cache of illicit drugs is smuggled across the border. Some local Pharmaceutical Industries, State police officials and other affluent people have been suspected to be involved, at occasions, in international drug trafficking. The drug addiction has posed a serious threat to the once vibrant state of Punjab. The Courts, therefore, ought to be highly circumspect while granting bail, especially to a repeat offender. The appellant, as it seems from the allegations, is a drug peddler and there is every likelihood of his returning to the same illicit trade once he is allowed the privilege of pre-arrest bail.”

13. The recovery alleged in the present case is commercial in nature; therefore, this Court is not inclined to record the twin test satisfaction in favour of petitioner in terms of Section 37 of the NDPS Act.

14. Of course, for the purpose of trial, mere disclosure of co-accused may not be sufficient to convict a person; but that would be



CRM-M-19657-2025

6

considered at the time of final trial and the evidentiary value thereof is to be assessed along with other attending circumstances, including the materials collected by the Investigating Agency during investigation. In view of the above, ***Tofan Singh's case (supra)*** is not helpful to the petitioner and thus the same is distinguishable, inasmuch in that case, conviction was challenged by the appellants therein; but here, it is only a bail application and investigation is at the nascent stage.

15. Again learned counsel for the petitioner has placed reliance upon order dated 03.03.2025 passed by this Court in CRM-M-36652-2024 titled as ***Gurbir Singh versus Union of India***, whereby one Gurbir Singh was granted concession of pre-arrest bail and relevant Para Nos. 6, 7 and 8 are reproduced as under:-

“6. *It transpires that petitioner was granted interim bail by the Coordinate Bench, vide order dated 31.07.2024 and the order reads as under:-*

“Petitioner Gurbir Singh has filed petition under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of anticipatory bail in case NCB Crime No. 03 dated 31.01.2024, for the offences punishable under Sections 21, 22, 23, 25, 27-A, 29, 60 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station NCB Amritsar, District Amritsar.

Learned counsel for petitioner argued that petitioner has been falsely implicated in this case. In-fact from the possession of Darshan Singh, Vijay Pal Singh, Dhoni Singh and Gursimran Singh, huge quantity of contraband i.e. 4.369 Kg suspected Heroin, 0.968 Kg of Methamphetamine, one pistol, one magazine, four live cartridges, Activa bearing No. PB-02-DP-2408 and drug money of Rs. 68,500/- were recovered on 30.01.2024. Present petitioner has been wrongly named by one of the accused. House of petitioner was raided but no recovery was effected. He is ready to join the investigation. It is prayed that his arrest may kindly be stayed.

Notice of motion.

On asking of this Court, Mr. Rajiv Sharma, Advocate accepts notice on behalf of Union of India through Intelligence Officer, Narcotics



CRM-M-19657-2025

7

Control Bureau, Amritsar. He is seeking adjournment to file status report. At this stage, learned counsel could not produce any document on record to connect present petitioner with accused who are already arrested.

In the light of this, let status report be filed on or before 10.09.2024.

Arrest of present petitioner is stayed only till next date of hearing, subject to joining of investigation.”

7. *It is duly acknowledged by learned counsel for respondent that in pursuance of the aforesaid order, petitioner has joined investigation and his custodial interrogation is not required.*

8. *Thus, in such a scenario, there is no hesitation to record the “Twin Test” satisfaction in favour of the petitioner as per Section 37(1)(ii) of the NDPS Act in the following manner:-*

(i) Prima facie, there is no material to indicate that petitioner was found in conscious possession of the alleged contraband; hence, being a debatable question, shall be decided during trial and in such a scenario, it is very difficult to say that petitioner is guilty of the alleged offence.

(ii) After registration of the FIR in question, petitioner has not been involved in any case under the NDPS Act.”

A perusal of the above extract reveals that in ***Gurbir Singh's*** case, State of Punjab did not ask for his custodial interrogation; however, in the present case, State is very much insisting for custodial interrogation of the petitioner to ascertain his role as well as the *modus operandi* adopted in the matter; hence his custodial interrogation would be very much necessary to unearth the truth; thus ***Gurbir Singh's case*** is also not helpful to the petitioner.

16. Consequently, there is no option, but to dismiss the petition.

17. Ordered accordingly.

18. Above observations be not construed as an expression of opinion on merits of case, in any manner.



CRM-M-19657-2025 8

Pending application(s), if any shall also stands disposed off.

22.04.2025 (MAHABIR SINGH SINDHU)
Rajeev (rvs) JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No