

CRM-M-20586-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20586-2025
Reserved on: 02.07.2025
Pronounced on: 16.07.2025

Arjun Bhola ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. D.K. Sharma, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0054	25.01.2025	Krishna Gate, Thanesar, District Kurukshetra	22(C) of NDPS Act and 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. In paragraph 16 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 24.01.2025 based on secret information, the Police seized 2160 capsules (total weight 01 kg 300 gram) from the possession of Satbir Singh and Kapil Dev, who later on named one Ajay Kumar and said Ajay Kumar named the petitioner as seller of the drug. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS 2023. The petitioner approached the Sessions Court for anticipatory bail, which was surprisingly denied.
4. The petitioner's counsel seeks bail on the ground that petitioner is named in the disclosure statement of co-accused and there is no other evidence against him. He further prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.
5. The State’s counsel opposes bail and refers to following portion of the reply

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which reads as follows:-

“...total weight of 5 capsules was 3 grams 01 miligrams. According to this, the weight of all 2160 recovered capsules is approximately 1 kilogram 300 grams 32 miligrams.”

6. It would be appropriate to refer to the following portions of the reply, which read as follows:

“The co-accused Ajay Kumar from his mobile no.98128-45523 made telephonic call on mobile phone no.70154-89831 of petitioner/ accused and talking with each other about 290 times and copy of CDR of mobile phone no.70154-89831 already on record of this Hon'ble Court which was filed with status report which was filed on previous date of hearing before this Hon'ble Court.”

REASONING:

7. Before analysing the evidence, it shall be also appropriate to refer to following portion of the reply which reads as under:-

“That the petitioner/ accused has joined the investigation of the present case on 05.05.2025 and 06.05.2025 but he has failed to cooperate the investigating agency. The following are pain points which shows the role and involvement of petitioner/ accused in the present case.

i). That the petitioner/ accused has supplied the recovered contraband/ narcotic capsules to co-accused Ajay Kumar and this fact also admitted by the co-accused Ajay Kumar in his disclosure statement.

ii). That the co-accused Ajay is relative of petitioner/accused and co-accused Ajay Kumar is son of his aunt (Bua) and petitioner/ accused has supplied the recovered capsules to his brother (son of bua) Ajay Kumar and now he has filed the present petition before this Hon'ble Court on false grounds, hence petition of the petitioner/ accused is liable to be dismissed.

iii). That the petitioner/ accused while joined the investigation of the present has not given proper answering to the question which were put up before the petitioner/ accused, hence custodial interrogation of the petitioner/ accused is required in the present case to reach the logical end of the present case.

iv). That the petitioner/ accused also failed to disclose the name of other accused persons from whom he has purchased the intoxicant capsules,

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hence custodial interrogation of the petitioner/ accused required in the present case and petition of the petitioner/ accused is liable to be dismissed.

v). That the petitioner/ accused is active member of illegal racket of drug supplier but he has failed to cooperate the investigating agency while joined the investigation of the present case, hence petitioner/accused is not entitled for any relief as he has claimed in the present case and petition of the petitioner/accused is liable to be dismissed.

vi) That the recovery of an amount of Rs.46,800/- is still pending and to recover the same the custodial interrogation of the petitioner/ accused is required in the present case, hence petition of the petitioner/accused is liable to be dismissed.

vii) That the petitioner/ accused admitted that he is doing work of supply of medicines from the last 10/11 years but he has no drug licence or permit which shows the involvement of petitioner/ accused in the present case, hence petition of the petitioner/ accused is liable to be dismissed.

viii). The petitioner/ accused is the main supplier of recovered contraband but he has failed to cooperate the investigating agency and failed to give the answering of questions which were asked by the investigating officer from the petitioner/ accused while he was joined the investigation of the present case, hence petition of the petitioner/ accused is liable to be dismissed.

The copy of questions and answer put up before the petitioner/ accused by investigating officer are enclosed herewith Annexure R-1/A for kind perusal of this Hon'ble Court."

8. Although quantity of the drug involved is massive but the value of the drug is Rs.50,000/- and the petitioner has been arraigned as accused based on disclosure statement of co-accused, main evidence against the petitioner are call details, but same could be because of relationship as detailed in para No.8(ii) of the status report which favours the petitioner, as such given the peculiar facts and circumstances, relationship is found between Ajay and the present petitioner and he has made out a case for bail.

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. For now, the petitioner has prima facie satisfied the first condition of section 37 of

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the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

11. 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. Ahmadaliev Nodira*, (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. Ahmadaliev 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.

12. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, for the purpose of bail, the evidence is insufficient.

13. Given the penal provisions invoked, the legal admissibility of evidence collected against the petition, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or pre-trial incarceration.

CONDITIONS:

14. Given the above, without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for anticipatory bail.

15. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

16. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

17. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

18. Given the background of allegations against the petitioner, it becomes paramount

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to protect the members of society, Detection Squad and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

19. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

20. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

21. In Md. Tajiur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon'ble Supreme Court holds in Para 7, "It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences."

22. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State shall file an application for cancellation**

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of this bail before the Sessions Court, which shall have the liberty to cancel this bail.

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

24. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

25. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

16.07.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.