

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22942-2025
Reserved on: 01.09.2025
Pronounced on: 22.09.2025

Sagar ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Karandeep Singh Sidhu, Advocate for the petitioner.
Ms. Pooja Nayar Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
186	22.09.2023	Guruharsahai, Distt. Ferozepur	21, 22 of NDPS Act (Section 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 4 (ix) of the bail application and as per paragraph 8 E of the status report, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	142	23.08.2021	21 of NDPS Act	STF Phase-4, Mohali
2.	216	30.08.2022	22 of NDPS Act	Guruharsahai
3.	152	15.06.2022	21 of NDPS Act	Guruharsahai
4.	348	15.09.2022	21 of NDPS Act	City Ferozepur
5.	93	10.08.2021	22/29 of NDPS Act	Guruharsahai
6.	263	07.10.2022	21/29 of NDPS Act	Guruharsahai
7.	92	02.03.2023	307, 427, 279 IPC & 25 of Arms Act	City Ferozepur

3. The facts and allegations are taken from the status report filed by the State. On 22.09.2023, based on secret information, the Police seized 270 grams heroin from the possession of co-accused Rani. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. During the custodial interrogation of the co-accused Rani, she disclosed that she purchased the heroin from Rattan Singh @ Rs.1200/- per gram. She further confessed that petitioner Sagar, who is her son, used to sell the said heroin at the rate of Rs.2000/2200/- per gram; based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.

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:

“5. That during investigation, the mobile call details of Rani, Rattan Sing and present petitioner were also obtained and as per the said details obtained through CDR, Mobile number of Rattan Singh bearing No.96644xxxx, 75085xxxx is having conversation with the mobile numbers of Rani wife of Ashwani and Sagar (present petitioner) son of Ashwani bearing mobile No.75278xxxx, 80543xxxx, 70091xxxx and 77102xxxx for the last so many months. Furthermore, on the next date i.e. dated 23.09.2023 of recovery of contraband, Rattan Singh accused found having conversation with Sagar (present petitioner) from his mobile no.94664xxxx to 75278xxxx.

xxxxx

8. C The evidence against the petitioner
Secret information as well as confessional statement of Rani.

D. The role of the petitioner
So far as the role of the petitioner is concerned, he is associate with the co-accused Rani and her son Sagar, indulged in sale of heroin and other intoxicants in the area of Guruharsahai.”

REASONING:

7. As per paragraph 8 of the status report, the name of the contraband is heroin and its weight is 270 grams.
8. Dealing in 270 grams of heroin 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	270 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	108.00%

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	
Commercial Quantity	> 250 Gram	

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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 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. The 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 bail.

13. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offence 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

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.

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 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. As per the custody certificate dated 30.08.2025, the petitioner's custody is 01 year and 19 days, which cannot be considered prolonged.

21. Regarding the delay in the trial, if the trial does not conclude within one year and six months of the petitioner's custody, and the delay is not attributable to the petitioner, the petitioner may apply for bail before the trial Court. The Court shall not be influenced by the dismissal of bail on merits or by criminal history and shall decide it on changed circumstances and the prolonged trial.

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

23. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

22.09.2025

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.