

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

**CRM-M-25435-2025
Reserved on: 02.09.2025
Pronounced on: 24.09.2025**

BALWINDER SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashok Giri, Advocate for the petitioner.

Ms. Pooja Nayar Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
31	01.04.2025	Lohian, District Jalandhar Rural	15 of NDPS Act, 1985

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 14 of the bail petition and para 9 of the status report dated 17.05.2025, the petitioner has no criminal antecedents.

3. The facts and allegations are taken from the reply filed by the State. On 01.04.2025, based on secret information received by SI Labh Singh regarding the alleged involvement of the petitioner in the sale of poppy husk, a police party conducted a raid at the residential premises of the petitioner. It is alleged that the petitioner managed to escape from the spot at the time of the raid. During the search of the premises, the police officials claim to have recovered 130 kilograms and 800 grams of poppy husk from his premises. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.

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 their family.

5. The State's counsel opposes bail and refers to the reply.

REASONING:

6. As per paragraph 5 of the reply dated 17-05-2025, the name of the contraband is Poppy straw and its weight is 130 Kg and 800 grams.

7. Dealing in 130 Kg and 800 grams of poppy straw in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Poppy straw
Quantity detained	130.8 Kg
Punishable U/s	S.15(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	261.60%

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.	110	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Poppy straw	
Other non-proprietary name	*****	
Chemical Name	*****	
Small Quantity	< 1000 Gram (i.e. equivalent to 1 Kg)	
Commercial Quantity	> 50000 Gram (i.e. equivalent to 50 Kg)	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.15 & S.2(xviii) NDPS Act, S.O.821(E)	11/14/1985

Sr. No.	S.2(xviii)
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Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom; S. 2(viiiib)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances; S.2 (xvii) “opium poppy” means— (a) the plant of the species <i>Papaver somniferum</i> L; and (b) the plant of any other species of <i>Papaver</i> from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act; S2. (xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

8. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act and the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

9. It shall be relevant to refer to the following portions of the reply dated 17-05-2025, which reads as follows:

“NAME AND WEIGHT OF DRUG:

5. That in the instant case, 130 KG 800 Grams of poppy husk has been recovered from the residential room of the petitioner.

**EVIDENCE BASED ON WHICH THE PETITIONER WAS ARRAIGNED
AS ACCUSED:**

6. That the petitioner was arraigned as an accused in the instant case on the basis of secret information received by SI Labh Singh (Belt No. 58/Jal) to the effect that the petitioner namely Balwinder Singh indulge in the sale of poppy husk and if a raid is conducted in his residential room, then heavy quantity of poppy husk can be recovered.

EVIDENCE AGAINST PETITIONER

That a recovery of 130 KG 800 Grams of poppy husk has recovered from the residential room of the petitioner. However, on seeing the police officials, the petitioner managed to escape.

ROLE OF THE PETITIONER:

That the petitioner is the sole accused in the instant case who was nominated on the basis of secret information received by SI Labh Singhto the effect that the petitioner namely Balwinder Singh indulge in the sale of poppy husk and if a raid is conducted in his residential room, then heavy quantity of poppy husk can be recovered. When the police officials raided the residential room of the petitioner, the petitioner managed to escape and a recovery of 130 KG 800 Grams of poppy husk has been recovered from the residential room of the petitioner.”

10. It shall be relevant to refer to the following portions of the reply dated 05-07-2025, which reads as follows:

“5. That during the course of investigation, statement of Jasvir Kaur (wife of Satnam Singh), Sarpanch of Village Mundi Shehrian was recorded who stated that since she is the Sarpanch of said village, she knows all the residents. She further stated that Pritam Singh is a resident of her village who has 3 sons ie. Kulwant Singh, Balwinder Singh @ Binder (petitioner) and Bhajan Singh and Pritam Singh has distributed his ancestral land amongst his three sons. Lastly, Jasvir Kaur stated that the petitioner along with his family was also residing in the village in a house which has 2 rooms and one bathroom. A true translated copy of the statement of Jasvir Kaur, Sarpanch of Village Mundi Shehrian is placed on record as ANNEXURE R1/T.

6. That furthermore, during investigation, a joint statement of Sheero Bai and Gurdial Singh (Panch of Village Mundi Shehrian) along with Gurbaksh Singh and Mukhtiar Singh (residents of Village Mundi Shehrian) was recorded who stated that the petitioner along with his family was residing in a house in their

village which was given to the petitioner by his father Pritam Singh. A true translated copy of the joint statement is placed on record as ANNEXURE R2/T.

7. That it is pertinent to mention herein that the recovery of 130 KG 800 Grams of poppy husk was effected from the house which stands registered in the name of Pritam Singh (father of petitioner) but as is evident from the statements of Sarpanch Jasvir Kaur and other residents of the village, it was the petitioner who was residing in the said house along with his family.”

11. It shall be relevant to refer to para 5 of the bail petition, which reads as follows:

“5. That it goes without saying that the premises does not belong to the petitioner, rather he is residing at far off place at Mehatpur in rented accommodation since March 2025, which is apparent from rent deed, true copy of which is attached as ANNEXURE P-1. There is no documentary evidence with the police regarding ownership of the premises, except bald statement of so-called secret informer as also IO.”

12. It shall be relevant to refer to the following portions of the reply dated 04-08-2025, which reads as follows:

*“5. That the averment made by the petitioner that he was living in a rented accommodation (Annexure P/1) has been found to be false. In this regard, statement of Jeevan Singh (son of Bhagat Ram), owner of the house where the petitioner alleged that he was living on rent, was recorded who stated that he owns a house in Dashmesh Colony, Prajiyan Road, Mehatpur, Police Station Mehatpur, District Jalandhar, and the registry of this house is in the name of his wife Parveen Kaur. In March, 2025, the petitioner asked him to rent the said house. In this regard, Jeevan Singh told his nephew Manpreet Singh, son of Amarjeet Singh, resident of Mohalla Khurampur, Ward No. 10, Mehatpur, District Jalandhar, to let the house on rent, as he (Jeevan Singh) was ill at the time. On 26.03.2025, Manpreet Singh let the house on rent and the rent was fixed at Rs. 4,000 per month. On 28.03.2025, Manpreet Singh went to Kuwait. Jeevan Singh further stated that the petitioner did not permanently reside in the said house and the petitioner used to visit the house at times only. The petitioner only paid first month's rent. But after that, whenever they went to collect the rent, the petitioner had put a lock (chain) on the outer gate of the house. A true copy of the statement of Jeevan Singh is placed on record as **ANNEXURE R3/T**.*

6. That furthermore, statement of the following persons were also recorded who stated that the petitioner did not permanently reside in the house, as

alleged by him. Most of the time, the petitioner kept the outer gate locked with a chain and was not living in the house regularly.

i. Parveen Kaur (registered owner of the house),

ii. Gurpreet Singh (nephew of Jeevan Singh),

iii. Sartaj Singh (resident of the neighbourhood),

iv. Dilbagh Singh (resident of the neighbourhood),

v. Balkar Singh (resident of the neighbourhood),

vi. Mahinder Singh (resident of the neighbourhood),

vii. Nirmal Singh, son of Randhir Singh (resident of the neighbourhood),

viii. Nirmal Singh, son of Desa Singh (resident of the neighbourhood).

A true translated copy of the statements of said person is placed on record as ANNEXURE R4/T.

7. That it is respectfully submitted that a false averment has been made by the petitioner that he was living in a rented accommodation (Annexure P/1). ”

13. Given the above, the petitioner has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

14. 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.

15. 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

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.

possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

16. 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.

17. 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.

18. The petitioner's arguments did not point toward any material contradictions.

19. The submissions made above and 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.

20. 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.

21. 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.

22. 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.

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

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

(ANOOP CHITKARA)
JUDGE

24.09.2025
renubala

Whether speaking/reasoned: Yes
Whether reportable: No.