

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

CRM-M-25834-2025
Reserved on: 03.09.2025
Pronounced on: 29.09.2025

ANIL KUMAR

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

Mr. Atul Gaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
338	01.08.2024	Sadar Fatehabad, District Fatehabad	22-C/27-A and 29 of NDPS Act, 1985

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. Per paragraph 15 of the bail application and the reply, the petitioner has no criminal antecedents.
3. The facts and allegations are taken from paragraphs 2 and 4 of the reply filed by the State, which read as follows:

“2. That brief facts of the case are that present FIR has been registered on the complaint of complainant ASI Suryakant No. 156/Ftb. Complainant asserted in the FIR that on 01.08.2024, complainant along with fellow police officials in connection with prevention of narcotics were present at Khunan Chowk on Ratia road, where, he received secret information that Karamvir @ Deepak (co-accused) son of Krishan Lal, resident of village Hanspur, Satpal @ Satta (co-accused) son of Balwinder, resident of Hanspur and Anil Kumar (petitioner-accused) son of Hardish, resident of Hanspur are indulge in the business of selling narcotics tablets and they all of three with huge quantity of narcotic tablets in their possession on motorcycle Splendor Plus

No.PB-51B/5337 and Motorcycle Platina No.PB-31L/9485 are standing on Ratia road just before village Hanspur for sale of narcotic tablets. The information being reliable, information under Section 42 of NDPS Act was prepared and sent to Police Station Sadar, Fatehabad. Thereafter raid was conducted at the disclosed place where three boys were seen standing there and one of them was having one black coloured polythene envelope in his right hand and two motorcycles were also seen parked there. On seeing the police officials in Government vehicle, one of the boy ran towards fields and two of them were to sit on motorcycles but they were apprehended. The boy holding the envelop disclosed his name as Satpal @ Satta son of Balwinder Singh @ Pappu and another boy told his name as Karamvir @ Deepak son of Krishan Lal@ Piku. Separate notices under Section 50 of NDPS Act served upon both of them and after obtaining their reply, Sh. Sharvan Kumar AETO Excise Taxation Officer, Fatehabad was requested to reach on the spot and after his arrival, personal search of both the accused, their motorcycles and the black coloured polythene envelop was conducted, the videography of which was also conducted. On search of co-accused Karamvir alias Deepak and his motorcycle bearing Reg. No. PB51B5337 marka Hero Splendor colour black, a mobile phone was recovered from the personal search of co-accused Karamvir alias Deepak. Thereafter, complainant conducted the search of co-accused Satpal alias Satta and his motorcycle bearing Reg. No. PB31L9485 marka Platina colour black was conducted and during search, mobile phone was recovered during his personal search and **during search of polythene envelop carried out by co-accused Satpal alias Satta, 120 strips each containing 10 tablets of NRX Tramlax- SR-100 Tramadol Hydrochloride Extended Release Tablets USP 100 mg having batch No.T240061, Mfg Jan 2024 and Exp. Dec 2025 weighing 549 grams** were recovered. The recovered narcotic tablets along with above motorcycles were taken into police possession. **Accused Satpal @ Satta and Karamvir @ Deepak told the name of boy fled from the spot as Anil Kumar (petitioner-accused) son of Hardish, resident of Hanspur.** On the complaint of complainant, present case was registered under section 22(c) of NDPS Act at Police Station Sadar Fatehabad against three accused persons namely **(i) Karamvir @ Deepak (ii) Satpal @ Satta and (iii) Anil Kumar (petitioner-accused)** and investigation was carried out.

3.That after registration of F.I.R., investigation was entrusted to SI Mahabir Singh No. 90/Ftb and during investigation spot memo was prepared by the Investigating Officer and both two accused persons i.e. **Karamvir @ Deepak and Satpal @ Satta** were arrested in accordance with Law and during arrest,

*both accused suffered their respective disclosure statements regarding their involvement in the present case. **Co-accused Satpal @ Satta** disclosed (**Annexure R-1**) that "when he was confined in Mansa Jail, he get acquaintance with Ankur Mehta (co-accused) whose mobile numbers are 92575-81525 and 8160612506 and later on, after getting out from the Jail, he started purchase of intoxicant tablets from Ankur Mehta (co-accused) and for selling the same in the village, I (co-accused Satpal alias Sattu) get acquaintance with co-accused Karamvir alias Deepak and Anil Kumar (petitioner- accused) of my village Hanspur and he started selling the intoxicant tablets with the help of co-accused Karamvir alias Deepak and Anil Kumar (petitioner-accused) and he used to give them Rs. 100 per strip as commission. He further disclosed that on 01.08.2024, he purchased the recovered contraband from co- accused Ankur Mehta, near Swami Dhaba, Hanspur road, Fatehabad at the rate Rs. 200 per strip and the money was to be given to him after selling the same and when he alongwith Karamvir alias Deepak and Anil Kumar (petitioner-accused) were standing near Anaj Mandi, Ratia Road on their respective motorcycles for waiting of customers, police caught both of us and meanwhile **Anil Kumar (petitioner-accused) ran away from the spot**". In pursuance of his disclosure statement, co-accused Satpal alias Satta got demarcated the place of occurrence.*

4. *That during investigation, one day police remand of co-accused Satpal @ Satta was obtained from the Ld. Illaqa Magistrate and during police remand, co-accused Satpal alias Satta again suffered disclosure statement (**Annexure R-2**) and disclosed that "my mobile numbers are 98966-5XXX & 87082-76XXX ; mobile numbers of Akur Mehta (co-accused) are 92575-81XXX & 81606-125XXX and mobile number of Karmveer alias Deepak is 70142-01XXX and **mobile number of Anil Kumar (petitioner-accused) is 97100-22XXX**. He further disclosed that **we used to talk with each other about buying and selling of drugs through above said mobile numbers** and about 4-5 days ago, I had bought the recovered contraband from Hanspur Road Fatehabad near Swami Dhaba".*

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.
5. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody.
6. 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.

7. The petitioner’s counsel submits that the petitioner would have no objection whatsoever to any stringent conditions that this Court may impose, including that if the petitioner repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, or commits any offence under the NDPS Act, where the quantity involved is more than half of the intermediate, or commercial quantity, or violates S. 19, or 24, or 27-A of the NDPS Act, the State may file an application to revoke this bail before the concerned Special Judge or Sessions Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and may do so at their discretion, to which the petitioner shall have no objection.

8. The State’s counsel opposes bail and refers to the reply.

REASONING:

9. It shall be appropriate to refer to paragraphs 12 and 13 of the reply, which read as follows:

“12. That during investigation, Investigating Officer obtained Call details record of mobile numbers 9896655810 and 8708276028 of co- accused Satpal alias Satta and mobile number 9710022500 of Anil Kumar (petitioner-accused). On perusal of the Call details record, it has been found that there are several conversations of co-accused Satpal alias Satta with Anil Kumar (petitioner-accused) on his mobile number 9710022500. Call details record is enclosed herewith as Annexure R-5 for the kind perusal of the Hon'ble High Court, however, brief details is as under: -

<i>Sr. No.</i>	<i>Mob. No. of co-accused Satpal</i>	<i>Mob. No. of petitioner-accused Anil Kumar</i>	<i>Date</i>	<i>Remarks</i>
<i>1.</i>	<i>98966-55XXX</i>	<i>97100-22XXX</i>	<i>15.07.2024</i>	<i>2 times</i>
<i>2.</i>	<i>98966-55XXX</i>	<i>97100-22XXX</i>	<i>22.07.2024</i>	<i>1 time</i>
<i>3.</i>	<i>98966-55XXX</i>	<i>97100-22XXX</i>	<i>23.07.2024</i>	<i>2 times</i>
<i>4.</i>	<i>98966-55XXX</i>	<i>97100-22XXX</i>	<i>30.07.2024</i>	<i>2 times</i>
<i>5.</i>	<i>98966-55XXX</i>	<i>97100-22XXX</i>	<i>31.07.2024</i>	<i>5 times</i>

13. That in compliance of order dated 16.05.2025, point wise brief details qua to the petitioner-accused Anil Kumar is as under: -

<i>A.</i>	<u>THE NAME AND TOTAL WEIGHT OF THE DRUG.</u>
	<i>That during search of polythene envelop carried out by co- accused Satpal</i>

	<i>alias Satta, 120 strips of NRX Tramlax-SR-100 Tramadol Hydrochloride Extended Release Tablets USP 100 mg Thaving batch No.T240061, Mfg Jan 2024 and Exp. Dec 2025 <u>weighing 549 grams were recovered.</u></i>
B.	<i>THE EVIDENCE BASED ON WHICH THE PETITIONER WAS ARRAIGNED AS AN ACCUSED:</i>
	<i>That in the present case, complainant has received secret information that co-accused Karamvir @ Deepak, Satpal @ Satta and Anil Kumar (petitioner-accused) are indulge in the business of selling narcotics tablets and they all of three with huge quantity of narcotic tablets in their possession and are standing on Ratia road just before village Hanspur for sale of narcotic tablets. On which, raid was conducted at the disclosed place where three boys were seen standing there and one of them was having one black coloured polythene envelope in his right hand and two motorcycles were also seen parked there. On seeing the police officials in Government vehicle, one of the boy ran towards fields. Later on, accused Satpal @ Satta and Karamvir @ Deepak told the name of boy who fled from the spot as Anil Kumar (petitioner-accused) son of Hardish, resident of Hanspur.</i>
C.	<i>THE EVIDENCE AGAINST THE PETITIONER:</i>
	<i>(i) There are several Call details (Annexure R-5) record between petitioner-accused Anil Kumar and co-accused Satpal alias Sattu.</i> <i>(ii) That name of present petitioner-accused Anil Kumar was also disclosed by the secret informer.</i> <i>(iii) Petitioner has been specifically named by co-accused Satpal @Sattu (who was arrested on spot) and petitioner has been specifically named in the FIR.</i>
D.	<i>THE ROLE OF THE PETITIONER:</i>
	<i>That the present petitioner was remained associate with other accused persons i.e. co-accused Satpal @ Sattu and Karamvir @ Deepak, but, when raid was conducted by the police, petitioner-accused Anil Kumar fled away from the spot.</i> <i>(ii) That co-accused Satpal alias Sattu selling the intoxicant tablets with the help of co-accused Karamvir alias Deepak and Anil Kumar (petitioner-accused) and co- accused Satpal alias Sattu used to give them Rs. 100 per strip as commission. On 01.08.2024, co-accused Satpal alias Sattu purchased the recovered contraband from co-accused Ankur Mehta and</i>

	<i>when he alongwith Karamvir alias Deepak and Anil Kumar (petitioner-accused) were standing near Anaj Mandi, Ratia Road on their respective motorcycles for waiting of customers, police caught co-accused Satpal alias Satta and Karamvir alias Deepak and meanwhile Anil Kumar (petitioner-accused) ran away from the spot. ”</i>
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10. Dealing in 549 grams of Tramadol, in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Tramadol
Quantity detained	549 Gram
Punishable U/s	S.22(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	219.60%

Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	S.O. 1762 (E) dated 26.04.2018

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1762(E)	4/26/2018
Sr. No.	238 ZH	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol	
Other non-proprietary name	*****	
Chemical Name	*****	
Small Quantity	< 5 Gram	
Commercial Quantity	> 250 Gram	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.O.1761(E) & S.O. 3448(E)	26-Apr-2018 & 26-Jul-2018

Sr. No.	110Y
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Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

11. 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.

12. 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.

13. 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.

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.

14. 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.

15. The petitioner’s arguments did not point toward any material contradictions.

16. 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.

17. 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.

18. 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.

19. 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.

20. The petitioner's custody is more than 09 months cannot be termed prolonged, given the minimum sentence prescribed for the offense, which is 10 years.

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, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.09.2025

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Whether speaking/reasoned: Yes

Whether reportable: No.