

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28668-2024
Reserved on: 03.02.2025
Pronounced on: 14.02.2025

Gaurav ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Aashish Bishnoi, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
276	23.05.2023	City Fatehabad, District Fatehabad	21-C, 27-A, 29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC seeking regular bail.
2. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the status report filed by the State. On 22.05.2023, based on secret information, the Police seized 265 grams of Heroin from petitioner's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
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 status report.

REASONING:

6. 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.

7. Per the custody certificate dated 30.01.2025, the petitioner's custody in this FIR is 01 year, 08 months and 04 days.

8. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

9. The petitioner prays for bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Dheeraj Shukla would be attracted when the three conditions are fulfilled,

- (a). The custody of more than two years and six months and the delay was not attributable to the accused.
- (b). The trial is at an initial stage.
- (c). The petitioner is the first offender.

10. It shall be appropriate to refer to the following portions of status report filed by State counsel, which reads as follows:

"3. That briefly stated facts of the case are that on 22.05.2023, a police party headed by PSI Parveen Kumar along with ASI Anup Singh 895/HSR, E/HC Vijay Kumar No. 591/Jind, CT Ravinder Kumar No. 855/DDR, HC Virender Singh No. 845/HSR having Laptop, printer along In Govt. vehicle bearing registration No. HR-03X-8465 being driven by E/HC Sunil Kumar No. 1370/HSR were present beneath of flyover of Sirsa-Hisar, Fatehabad situated on NH-9 in relation to patrolling and checking of crime. Meantime a secret informer came and informed that Gaurav son of Satpal resident of Hanumangarh and his friend namely Jaswinder Singh son of Rajinder Singh resident of Hanumangarh had brought Heroin (Chitta) from Delhi and they are standing in front of New Bus Stand, Fatehabad to sell this Heroin (Chita) to anyone. If raid be conducted immediately then said persons can be apprehended at the spot along with Heroin (Chitta). On finding the information being reliable, report under section 42 of NDPS Act was sent to the higher officials for information by hand of E/HC Sunil Kumar 1370/HSR. Thereafter the complainant informed the fellow police official about the secret information and I P/SI along with fellow official in Govt. vehicle reached at New Bus Stand, Fatehabad and the search of both the said persons was made as per secret information and two persons were seen standing on the left side of the Road facing towards City Fatehabad in front of the Bus Stand. I P/SI signalled them to stop on seeing the police party both the persons tried to run away by turning back and were apprehended by the police party. On asking their name and address the first person disclosed his name as Gaurav (petitioner/accused) and Second person as Jaswinder Singh. Request were made to passerby for join the raiding party, however, everyone shows their inability and left from the spot without disclosing their name and address. Upon suspicion the notice under section 50 of NDPS Act, was served upon the suspects and as per their reply search of them was conducted in presence of Gazetted officer Rajesh Kumar, District Employment Officer, Fatehabad. During search of suspect Gaurav from his right pocket of jeans worn by him 5 packets of Khakhi Colour were

recovered and upon checking Heroin (Chitta) was recovered. The recovered Heroin was weighted with the help of computer scale, on which it became 265 grams of Heroin alongwith polythene. The recovered Heroin was put in plastic jar and its parcel was prepared separately. During search of suspect Jaswinder Singh one polythene of Khakhi colour was recovered from the right pocket of lower worn by him and on checking Heroin was recovered. The recovered Heroin was weighted and which it became 25 grams of Heroin. The recovered Heroin was put in a separate plastic jar and its parcel was prepared. On inquiry the petitioner/accused Gaurav and co-accused Jaswinder Singh disclosed that they had brought the said recovered Chitta (Heroin) from one Nigerian namely John at the Pillar of Piragarhi Metro Railway Station Delhi and the said Heroin was brought by us at the instance of one Hussain son of Bahar Ali resident of Khunja, Hanumangarh, Mobile No. 98777-00704. Because we three doing the business of selling Heroin/Chitta by conniving with each other.

4. That since the petitioner/accused and co-accused Jaswinder by keeping in their possession total $265+25=290$ Grams of Heroin have committed the offence under section 21-C of NDPS Act, hence, on the basis of aforesaid facts the present case/FIR under section 21-C of NDPS Act was registered and investigation of the case was conducted by the second investigating officer. During investigation place of occurrence occurrence was prepared. The case property was taken into police arrested on 23.05.2023 by the investigating officer. During investigation place of occurrence was inspected on the demarcation of complainant and site plan of place 384 9800session and the petitioner/accused and co-accused Jaswinder were arrested on 23.05.2023 by the investigating officer.”

11. 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.

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.

12. 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.

13. 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.

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

15. 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.

16. Per the custody certificate dated 30.01.2025, the petitioner's custody is 01 year, 08 months and 04 days, which cannot be considered prolonged.

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 of around 02 years cannot be termed prolonged, given the minimum sentence prescribed for the offense, which is 10 years.

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

22. **Petition dismissed.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

14.02.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.