

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28417-2025
Reserved on: 01.07.2025
Pronounced on: 11.07.2025

Rohit Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
55	28.02.2025	Anti Narcotics Force (ANTF) District ANTF Wing SAS Nagar (Mohali)	18 and 29 of NDPS Act

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 15 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from status report dated 27.05.2025 filed by the concerned Deputy Superintendent of Police. On 28.02.2025, when the police party was searching drug peddlers, then they received a secret information that one Daulat Ram@ Guri does the business of selling opium and even on that day he was going on bike and has massive quantity of opium. The secret informer also gave description of said person. After that, the Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023. Subsequently, the police was able to nab Daulat Ram and from his possession, they recovered 2 kg 595 grams of opium. After his arrest, the police also recovered a mobile phone from him. During interrogation, he disclosed to the police that petitioner Rohit Kumar is a liquor vendor and he also procured the opium from his acquaintance and they used to sell the opium and divide the money.

4. Counsel for the petitioner seeks bail on the grounds that the only evidence against the petitioner is in the shape of disclosure statement, which is not admissible, as such, the petitioner is entitled to bail. He further submits that it is a false case because on 28.02.2025 when he refused to supply liquor to the police officials, they got annoyed and implicated him in this case. He further submits that quantity is marginally above than the commercial quantity, as such, he is entitled to bail.

5. 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.

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

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

"7. That from the further investigation, it has transpired that Daulat Ram is having mobile No.74049-xxxx registered in his name and present petitioner/accused Rohit Kumar is having mobile No.88140-xxxx registered in his name according to the Customer Application Form (CAF) provided by the telecom company. The copies of Customer Application Forms (CAF) is attached herewith as Annexure R-1 & 2.

*8. That in order to further ascertain the link between the petitioner and accused Daulat Ram @ Guri, the record of CDRs of Mobile No.74049-xxxx (used by Daulat Ram @ Guri) and Mobile No.88140-xxxx (belonging to the petitioner), have been obtained, which shows the following telephonic call has been made by the petitioner and Daulat Ram @ Guri to each other:-
Xxx xxx*

The above record shows that the petitioner and co-accused Daulat Ram @ Guri have talked to each other on 27.02.2025 and 28.02.2025 i.e. prior to and on the date when the recovery of 2 KG 595 GM opium has been affected from Daulat Ram @Guri, which clearly establishes that the petitioner is duly involved in the illicit drug cartel carte being carried out by petitioner and Daulat Ram @Guri."

8. In para 8 of the status report, details of multiple calls on 27.02.2025 and 28.02.2025 made between the petitioner and the main accused have been provided.

9. It would be appropriate to refer para 10 of the reply, which read as follows:

The evidence based on which the petitioner was arraigned as an accused:-

10. That there is a clear cut involvement of the petitioner which is established from the CDRs of mobile number of the petitioner and co-accused Daulat Ram @ Guri (as stated supra) and even as per call details, the petitioner had talked to accused Daulat Ram @ Guri on 27.02.2025 and 28.02.2025 i.e. prior to and on the date when Daulat Ram @ Guri had been apprehended and a recovery of 2 KG 595 GM opium has been affected from him. Moreover, Daulat Ram @ Guri had admitted in his interrogation that he had brought this opium from the petitioner. Thus, there is sufficient evidence on the basis of which, the petitioner has been arraigned as an accused.

REASONING:

10. Regarding the first argument that the police got annoyed due to non supplying of liquor and implicated petitioner in this case, no complaint was made by the petitioner or his family members to higher police officials, as such, this Court cannot take this skeleton averment as of any substance.

11. The second argument is that the quantity is marginally above the commercial, this argument is insignificant because even if the quantity is just a point fraction above the commercial, rigorous of Section 37 would apply and the statute does not give any leniency or discussions to the Court to consider such quantity as intermediate or to grant bail by ignoring rigorous of Section 37 of the NDPS Act.

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

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. 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. AhmadalievaNodira*, (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. Ahmadalieva 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.

15. 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.

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

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

(ANOOP CHITKARA)
JUDGE

11.07.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.