

CRM-M-33320-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33320-2024
Reserved on: 05.05.2025
Pronounced on: 19.05.2025

Rajinder Singh @ Raju ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Akshay Kumar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
103	22.07.2023	Sadar Raikot, District Ludhiana	21, 22, 25, 61, 85 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. Per paragraph 7 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	283	16.09.2017	22-61-85 of NDPS Act	Sidhwan Bet
2.	38	03.09.1999	61/1/14 of Excise Act	Sidhwan Bet
3.	136	12.07.2012	25/54/59 of Arms Act	Dakha
4.	172	09.12.2015	22/61/85 of NDPS Act	PAU Ludhiana
5.	2	06.01.2017	22, 25 of NDPS Act	Sidhwan Bet
6.	396	28.11.2017	21-61-85 of NDPS Act	Sidhwan Bet
7.	40	25.04.2017	22/61/85 of NDPS Act	Sudhar
8.	103	22.07.2023	21/22/25/61/85 of NDPS Act	Sadar Raikot
9.	152	07.10.2020	21/25/61/85 of NDPS Act	Sidhwan Bet
10.	70	18.04.2021	21-29 of NDPS Act	Sadar Ludhiana

3. The facts and allegations are taken from the status report filed by the State. On 22.09.2023, when police party headed by ASI Gurmeet Singh was patrolling for suspected persons and vehicles, then at that time he received secret information that petitioner who is habitual of selling drugs and other intoxicants is coming on his scooter and is in possession of Heroin and Investigator found the information reliable and after that sent ruqa to the Police Station, based on which FIR was registered against the

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petitioner. ASI also claims to have complied with mandatory requirement of Section 42 of NDPS Act by sending the information to higher police officials. After that he put barricade and in the meantime, one person came on a scooter of the number which was mentioned in the prior information. The said person stopped the scooter. On inquiry, he revealed his name as Rajinder Singh. The Investigator showed his intention to conduct search of his scooter and apprised him of his legal rights to get his search conducted before Gazetted Officer or a Magistrate. Written consent was also taken on the notice under Section 50 of NDPS Act which was allegedly served upon the petitioner. Petitioner reposed faith on ASI Gurmeet Singh and consented to get his search and of his scooter conducted by him. From beneath the pillion seat of the scooter, the Investigator recovered polythene bag which had 1105 intoxicant tablets and another small transparent polythene which had 07 grams of Heroin. Petitioner was arrested and Investigator claims to have complied with the procedural requirement of NDPS, 1985 and CrPC, 1973. The laboratory tested the powder as Diacetylmorphine and salt Clonazepam was found in the tablets and the total weight of the tablets is 133705 mg which prima facie is 133.705 gms.

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.

6. Dealing in 133.705 grams of Clonazepam is a punishable offence under the NDPS Act, in the following terms:

Substance Name	CLONAZEPAM
Quantity detained	133.705 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	133.71%

Specified as small & Commercial in S.2(viia) & 2(xxiiiia) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	189
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	CLONAZEPAM

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Other non-proprietary name	*****
Chemical Name	5-(o-chlorophnyl)-1,3-dihydro-7-nitro-2H-1,4-benzodiazepin-2-one
Small Quantity	5 Gram
Commercial Quantity	100 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	NDPS Act, 1985 (61 of 1985), S.O. 821(E)
dated	11/14/1985
Sr. No.	38
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	CLONAZEPAM
Other non-proprietary name	*****
Chemical Name	5-(o-Chlorophenyl)-1, 3-dihydro-7-nitro-2H-1, 4-benzodiazepin-2-one

7. Counsel for the petitioner made the following arguments. Petitioner’s first ground is conscious possession and claims that recovery was not from petitioner’s possession, police did not associate any independent witness. This argument is not corroborated by any complaint made by the petitioner regarding false implication. In case petitioner was falsely arraigned and was picked up from some other place, atleast rule of prudence would point out that petitioner or some of his family members would atleast file one complaint before the senior police officials highlighting the highhandedness which was not done. Further the police party claims to have recovered Heroin and tablets containing Clonazepam from dicky of the scooter which petitioner was driving, as such prima facie petitioner was in conscious possession, as such he is not entitled to bail on this ground. The next point is non-association of independent witness. Although the reply is silent about the reasons for non-association but joining of independent witness is a rule of prudence and it is not absolute rule of law for the reason that it is not certain that every time independent witness would be available or will be willing to associate. This point can be taken up at the time of trial and in the absence of any further details, petitioner cannot claim bail by referring to this point. The next point is non-compliance of Section 50 of NDPS Act. Recovery was not from person but from scooter as such Section 50 would not apply and petitioner is also not entitled to bail on this ground. Petitioner’s next ground is that he has child aged 02 years, old parents who have serious health issues and as such he is entitled to bail. Petitioner did not say about living status of his wife and how



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old his parents are and are they unable to take care of themselves or his child. The recovery in present case is commercial and burden is on the petitioner to come out of the statutory burden placed by the executive and made a law by the legislature which has been upheld by the Hon'ble Supreme Court in so many decisions. Thus, this Court cannot ignore the mandatory requirement of Section 37 of NDPS Act and once the petitioner has not rendered any explanation, petitioner is not entitled to bail on this ground. The last ground is pre-trial incarceration of 01 year, 09 months and 08 days as per custody certificate dated 04.05.2025. Petitioner has massive criminal antecedents and he did not refer to any judicial precedent of Hon'ble Supreme Court where bail had been granted for possessing the contraband similar to that of petitioner and custody of around 01 year and 10 months and when such accused had massive criminal antecedents, as such this Court is not inclined even on custody.

8. 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.

9. 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.

10. 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,

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.



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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.

11. 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.

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

13. 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.

14. Per the custody certificate, the petitioner's custody is 01 year, 09 months and 08 days, which cannot be considered prolonged.

15. In Union of India (NCB) v. Khalil Uddin, decided on 21 Oct 2022, 2022 SCC OnLine SC 2109, Hon’ble Supreme Court holds,



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[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.

16. 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.



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[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.

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 also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

18. The petitioner's custody of 01 year, 09 months and 08 days cannot be termed prolonged, given the minimum sentence prescribed for the offense, which is 10 years.

19. Regarding the delay in the trial, if the trial does not conclude within two years 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 the criminal history and shall decide it on changed circumstances and the prolonged trial.

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

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

(ANOOP CHITKARA)
JUDGE

19.05.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: YES.