

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30957-2025
Reserved on: 01.07.2025
Pronounced on: 24.07.2025

Toni Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Lalit Singla, Advocate
for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0031	09.04.2025	Khanauri, District Sangrur	15 of NDPS Act (Section 29 of NDPS Act added later on)

1. The petitioner apprehending arrest in the FIR captioned above had come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 13 of the bail application, the accused declares that he has no criminal antecedents.
3. Facts of the case are being taken from status report filed by State counsel. On 09.04.2025, when police officials were patrolling and checking the suspected persons, then at around 4.50 PM, they received a secret information that one Raj Kumar was indulging in sale of poppy husk which he brings from outside and he has concealed the same in animal shed (bagi). The informant also told the investigator that even now they can recover poppy husk from the shed. Based on this information, the Investigator claims to have complied with the provisions of NDPS Act and BNSS and proceeded towards the spot and raided the shed, where one person was found who disclosed his name as Raj Kumar @ Raju. From the search of six bags, police recovered 75 kg of poppy husk. On 12.04.2025, during investigation and interrogation, accused Raj Kumar @ Raju disclosed that he had purchased the poppy husk from the present petitioner and Rampal and at that time, they were also accompanied by one person. They used to talk from mobile no.97795-xxxxx to mobile no.95921-xxxxx through whatsapp as well as normal call. On 08/09.04.2025, they had given him the poppy straw.

4. Counsel for the petitioner seeks bail on the ground that the evidence is in the shape of disclosure statement which has no legal evidentiary value. In addition to disclosure statement, there is no other evidence. He further submits that petitioner was running a dhaba and in this connection, Raj Kumar @ Raju was well acquainted with him and his brother-in-law had also remained employed at Dhaba of Raj Kumar @ Raju, as such there was prior intimacy between them and because that there were call details which is basis of prosecution for petitioner's involvement. There is no CCTV or financial transactions to implicate the petitioner with recovery or that same was sold by him.

5. State counsel opposed the bail and has referred to status report.

6. An analysis of the above arguments would lead to the following outcome. The recovery of poppy straw took place on 10.04.2025. Para no.6 of the status report reveals that there were call details between petitioner and Raj Kumar @ Raju on 08.04.2025 when two calls were found to be made to each other. It would be appropriate to refer to para no. 8 (B) (C) and (D) of the status report which reads as follows:

“B. THE EVIDENCE BASED ON WHICH THE PETITIONER WAS ARRAIGNED AS AN ACCUSED.

Total 75 Kgs poppy husk (pods) was recovered from the possession of co-accused Raj Kumar @ Raju. During interrogation he disclosed that he used to talk with Toni and Rampal from his mobile No. 97795-xxxxx to the mobile phone 95921-xxxxx of Toni and mobile phone No. 93156-75 through whatsapp and normal call. On the intervening night of 8,9.04.2025, Toni Singh (present petitioner), Ramphal and one un-known person gave him poppy husk by visiting at Khanauri in their car. Calls Detail Record of Mobile phone No. 97795-xxxxx of main accused Raj Kumar @ Raju and mobile phone number 95921-xxxxx of accused Toni Singh (present petitioner) was obtained and perusal of CDR reveals that on 08.04.2025, two calls are found to be made between both of them, which shows that both had connections and were in touch with each other. In view of the facts stated above, the petitioner was rightly arraigned an accused in this case.

C. THE EVIDENCE AGAINST THE PETITIONER.

The 75 kgs poppy husk/pods recovered from the possession of main accused Raj Kumar @ Raju that was supplied to him by Toni Singh (present petitioner) and his two other co-accused. Apart from this, calls Detail Record of Mobile phone No. 97795-xxxxx of main accused Raj Kumar @ Raju and mobile phone number 95921-xxxxx of accused Toni Singh (present petitioner) was obtained and perusal of CDR reveals that on 08.04.2025, two calls are found to be made between both of them, which shows that both had connections and were in touch with each other. So, there is sufficient evidence against the present petitioner in the commission of present offence.

D. THE ROLE OF THE PETITIONER.

Total 75 Kgs poppy husk (pods) was recovered from the possession of co-accused Raj Kumar @ Raju. During interrogation he disclosed that he used to talk with Toni and Rampal from his mobile No. 97795-xxxxx to the mobile phone 95921-xxxxx of Toni and mobile phone No. 93156-75 through whatsapp and normal call. On the intervening night of 8,9.04.2025, Toni Singh (present petitioner), Ramphal and one un-known person gave him poppy husk by visiting at Khanauri at their car. Calls Detail Record of Mobile phone No. 97795-xxxxx of main accused Raj Kumar @ Raju and mobile phone number 95921-xxxxx of accused Toni Singh (present petitioner) was obtained and perusal of CDR reveals that on 08.04.2025, two calls are found to be made between both of them, which shows that both had connections and were in touch with each other. In view of the facts stated above, petitioner was found involved in drug trafficking. So, a specific role of supplying the 75 kilogram of poppy husk to his co-accused Raj Kumar @ Raju is attributed to the petitioner.”

7. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act.

8. In State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991, wherein the Hon’ble Supreme Court holds,

[8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

[9]. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

9. The quantity seized falls in the commercial category. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences 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 offence and is not likely to commit any offence while on bail. Thus, the rigors of S. 37 of

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.

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 offence 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, 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. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.

12. The quantity involved is commercial, and the burden to satisfy the rigor of condition of Section 37 of the NDPS Act was on the petitioner, which he did not discharge to the satisfaction of the statutory requirements. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for anticipatory bail. Any detailed discussions about the

evidence may prejudice the case of the petitioner, the State, or the other accused.

13. The learned Special Judge, while dismissing the anticipatory bail of the petitioner, has given elaborative reasons and considered almost every aspect.

14. 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.

15. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union of India v. Padam Narain Aggarwal* (2008) 13 SCC 305].

16. 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.

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

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

(ANOOP CHITKARA)
JUDGE

24.07.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.