

CRM-M-34865-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34865-2025
Reserved on: 09.09.2025
Pronounced on: 29.09.2025

Monu @ Monu Bhatti ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Piyush Sharma, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
139	01.05.2025	City Ferozepur, District Ferozepur	21 of NDPS Act (Section 29 of NDPS Act added later on)

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. Per paragraph 8 of the bail petition, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	407	06.10.2023	21/29 of NDPS Act	City Ferozepur, District Ferozepur

3. The facts and allegations are taken from the reply dated 16.07.2025. On 01-05-2025, based on secret information, the Police seized 334 grams of heroin from the possession of the main accused Prianshu @ Chantu. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS 2023.
4. During custodial interrogation, the main accused, Prianshu, confessed before the Police officer that the heroin was handed over to him by the petitioner Monu. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court

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under S. 482 BNSS, 2023.

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 their family.

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

REASONING:

7. As per paragraph 3 of the reply dated 16-07-2025, the contraband is 334 grams of heroin.

8. Dealing in 334 grams of heroin in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	334 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	133.60%

Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)

<i>Specified as small & Commercial in S.2(viia) & 2(xxiia) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
-		
Sr. No.	56	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin	
Other non-proprietary name	*****	
Chemical Name	Diacetylmorphine	
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.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)	11/14/1985

Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one mililitre of substance, if liquid, is contained in every one hundred mililitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

9. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act.
10. 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.

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11. The quantity of heroin that was 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 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.

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

“That during investigation of the case, Prianshu alias Chantu suffered disclosure statement on 04.05.2025 to the effect that the present petitioner is his friend and he along with present petitioner are indulged in sale of heroin. Prianshu alias Chantu further disclosed that he in order to contact the petitioner, used instagram ID i.e. X chantu3.07 on the instagram ID of present petitioner Monabhatti. He further confessed that the heroin i.e. 334 grams, which was recovered from him also handed over heroin to him by present petitioner to its further handing over to one unknown person at Qille Wala Chowk, Ferozepur. Even the Activa Scooty was also recovered from Prianshu alias Chintu, which belongs to the present petitioner. the Thus vide GD no.013 dated 04.05.2025, the present petitioner was nominated as accused.

A. The name and total weight of the drug.

Heroin, 334 grams

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.

B. The evidence based on which the petitioner was arraigned as an accused. *Disclosure statement of accused Prianshu alias Chantu*

C. The evidence against the petitioner.

Disclosure Statement of co-accused Prianshu alias Chantu

D. The role of the petitioner.

So far as the role of the petitioner is concerned, he was nominated on the disclosure statement of co-accused, who disclosed that the recovered heroin was handed over to him by the present petitioner.”

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.

14. It would be appropriate to refer to paragraphs 3 to 8 of the affidavit dated 18-08-2025 filed by the petitioner, which read as follows:

“3. That the contents of the corresponding paragraph are correct only to the extent to the case projected by the prosecution and the nomination of the Petitioner as an accused on the basis of the disclosure statement made by the co-accused Priyanshu alias Chantu.

4. That in reply to the corresponding paragraph it is respectfully submitted that the Petitioner did not have any mobile before the registration of the FIR however at the time of filing of the main petition before the Hon'ble High Court, the Petitioner had come to know that it is mandatory to mention Aadhaar card number and mobile number for filing anticipatory bail before the Hon'ble High Court therefore the person known to the Petitioner who accompanied him had given the mobile no. 8156567191. Therefore the Petitioner is not having any personal knowledge of the said mobile number. The Petitioner has never been intended to take any kind of undue benefit but has given the above said mobile number only for the purpose of filing the main petition before the Hon'ble High Court.

It is apt to mention here that the police has not disclosed anywhere in the reply the mobile number of the co-accused Prianshu Chantu to establish

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the communication of the said accused with the present Petitioner. Had the police done so then the police would have been in a better position to mention the mobile numbers of the above said Prianshu Chantu and the present Petitioner.

Thus it indicates that the police has nothing to establish the indulgence of the Petitioner in the commission of the alleged offence except the disclosure statement made by the above said co-accused.

5. That in reply to the corresponding paragraph it is respectfully submitted that at the time of joining the investigation in compliance to the order dated 12/08/2025 passed by the Hon'ble High Court, the Petitioner had given a mobile No. 76588-40426 which belongs to Gautam son of Ashok Kumar who is the Petitioner's Aunt's (deemed Massi) son who accompanied the Petitioner at the time of joining the investigation. Thus the police is only trying to take benefit of the Petitioner of not carrying mobile.

6.& 7. That the perusal of the corresponding paragraph also shows that there was no bank transactions between the Petitioner and the above said co-accused.

8. That in reply to the corresponding paragraph it is respectfully submitted that the Petitioner is always ready to cooperate with the investigation. The mentioning of the above said mobile numbers in the main petition and at the time of joining the investigation is only for the limited purpose to meet out the requirements. The Petitioner is having no mala fide intention to get any kind of undue benefit. The Petitioner undertakes that till date the Petitioner is not having any mobile number and the mobile numbers given at the time of filing of the petition as well as joining of investigation belongs to closely acquainted persons to the Petitioner."

15. An analysis of the grounds of bail, replies, and the counter affidavit, clearly indicate towards the sufficient prima-facie evidence explicitly connecting the petitioner with the heroin recovered from the co-accused.

16. 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

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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.

17. 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.

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

19. 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.

20. 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].

21. 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

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

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

(ANOOP CHITKARA)
JUDGE

29.09.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.