

CRM-M-37240-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37240-2025
Reserved on: 01.10.2025
Pronounced on: 28.10.2025

Jaswinder Singh alias Jiwan ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Sangha, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
148	01.06.2025	Anti Narcotics Force (ANTF) SAS Nagar	21, 27-B, 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. Per paragraph 19 of the bail petition and reply dated 23.07.2025, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	110	24.05.2022	22 of NDPS act	City South, Moga
2	27	21.04.2023	21 of NDPS Act	Mehna, Moga

3. The facts and allegations are taken from the reply dated 23-07-2025, filed by the DySP, ANTF, Ferozpur. On 01-06-2025, based on secret information, the Police seized 255 grams of heroin and INR 20,000/- which the police termed as drug money, from the possession of co-accused Kamaljit Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS 2023.
4. During custodial interrogation, the co-accused Kamaljit Singh confessed before the Police officer that the heroin was handed over to him by the petitioner Jaswinder Singh, who would telephonically instruct him for its supply. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he

CRM-M-37240-2025

filed for anticipatory bail from the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court 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. It would be appropriate to refer to paragraph 7 of the reply dated 23-07-2025, which read as follows:

“7. That during investigation of the case, on 04.06.2024 got recorded his statement with the police that he is working as receptionist in hotel City Heart near Bughipura Chowk, Moga and Jagdev Singh son of Darbara Singh resident of Patti Sarkar village Charik is owner of said hotel. Said Jagdev Singh had leased out the hotel for the period of 22.04.2025 to 21.03.2026 to Jaswinder Singh @ Jiwan (Petitioner) son of Saggar Singh resident of village Ramuwala Kalan. Jaswinder Singh @ Jiwan used to provide the heroin to him after purchasing the same from some unknown person and Jaswinder Singh @ Jiwan (Petitioner) used to give directions to Kamaljit Singh through phone no.95921-87831 and 78884-62881 by making calls to mobile no.96464-00249 and 97804-00249 to supply the heroin further and as per directions of said petitioner, Kamaljit Singh used to further supply the heroin to the customers. On the basis of said disclosure statement petitioner has been nominated as accused and offence u/s 29 of NDPS Act has been added in this case vide DDR No.11 Dated 04.06.2024.”

8. As per paragraph 8 A of the reply dated 23-07-2025, the contraband is 255 grams of heroin.

9. Dealing in 255 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	255 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
Quantity type	Commercial

CRM-M-37240-2025

Drug Quantity in % to upper limit of Intermediate	102.00%
---	---------

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(xxiii) 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.
--	---

10. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act.
11. It would be appropriate to refer to paragraph 7-G of the reply dated 29-09-2025, which read as follows:

“Call details.

The Call Details Record of Kamaljit Singh (90419-56750) and Jaswinder Singh (78142-90578) was obtained, and it was found that between the time period from 01.04.2025 to 31.05.2025, they had exchanged 658 calls.”

12. 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.

13. 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

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.

CRM-M-37240-2025

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.

14. 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.

15. 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.

16. The quantity involved is commercial, and the burden to satisfy the rigor of

CRM-M-37240-2025

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.

17. The learned Special Judge, while dismissing the anticipatory bail of the petitioner, provided detailed reasons and examined nearly every aspect.

18. The grounds in the bail petition do not shift the burden that 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.

19. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, the 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].

20. 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.

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

(ANOOP CHITKARA)
JUDGE

28.10.2025

anju rani

Whether speaking/reasoned: Yes

Whether reportable: No.