

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37151-2025
Reserved on: 10.09.2025
Pronounced on: 29.09.2025

Ajay Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. D.K. Sharma, Advocate
for the petitioner.

Mr. Birender Bikram Attrey, Addl. A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0054	25.01.2025	Krishna Gate Thanesar, District Kurukshetra	22(c) of NDPS Act (Section 29 of NDPS Act added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. Per paragraph 12 of the bail application, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	0758	18.09.2019	353 IPC and Section 1/14/61 of the Punjab Excise Act, 1914	-

3. The facts and allegations are taken from the status report filed by the State. On 24-01-2025, based on secret information, the Police seized 2160 capsules containing tramadol from the possession of co-accused Satbir Singh and Kapil Dev. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. As per paragraph 4 of the status report, during custodial interrogation, the main accused, Satbir and Kapil confessed before the Police officer that they had purchased the drugs from the petitioner. Based on such a confession before the police, the petitioner was arraigned as an accused.

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 status report.
7. As per paragraph 2 of the status report, the contraband is 2160 capsules containing tramadol, with total weight of 1.300 kgs.
8. Dealing in 1.300 kgs of tramadol in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Tramadol
Quantity detained	1.3 Kg
Punishable U/s	S.22(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	520.00%

Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	S.O. 1762 (E) dated 26.04.2018

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1762(E)	4/26/2018
Sr. No.	238 ZH	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol	
Other non-proprietary name	*****	
Chemical Name	*****	
Small Quantity	< 5 Gram (i.e. equivalent to 0.005 Kg)	
Commercial Quantity	> 250 Gram (i.e. equivalent to 0.25 Kg)	

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Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.O.1761(E) & S.O. 3448(E)	26-Apr-2018 & 26-Jul-2018

Sr. No.	110Y
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Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

9. 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.

10. It would be relevant to refer to para 8 of the petition which reads as follows:

“8. That it is pertinent to mention here that the co-accused, in their disclosure statement, named the petitioner and stated that they have purchased the recovered contraband from the petitioner for an amount of Rs. 50,000/-. However, during the investigation, police searched the house of the petitioner and also inspected the bank account of the petitioner, but neither the contraband nor money was recovered from the petitioner. Except the disclosure statement of co-accused, no other evidence has been found by the police against the petitioner during the investigation.”

11. It would be appropriate to refer to paragraphs 5 and 6 of the status report dated 01.09.2025, which read as follows:

“5. That the present FIR was registered against the petitioner/accused and others with the allegations that on 24.01.2025, on the basis of a secret information, 2160 capsules of AKS Primevon (90 strips containing 24 capsules each), total 2160 capsules weighing 1 Kg. 300 grams 32 milligrams of AKS Primevon containing Dicyclomine Hydrochloride Tramadol Hydrochloride and Acetaminophen salt (a psychotropic substance provided at Sr. No.238 ZH of the Schedule attached with the NDPS Act) were allegedly recovered from the possession of co-accused Satbir Singh and Kapil Dev, when they were coming in car No.HR07AA-0185 being driven by Satbir Singh and Kapil Dev was sitting along with him, were apprehended by the police party. The name of present petitioner/ accused has surfaced in the disclosure statement of co-accused Satbir Singh and Kapil Dev and copy of disclosure statement of Satbir Singh and Kapil Dev are enclosed herewith as Annexure R-1 and Annexure R-2 for kind perusal of this Hon'ble Court. The petition of the petitioner/ accused is totally based on false and concocted story as the petitioner/accused while arrested by police party he has made his disclosure statement voluntarily by admitting his crime and copy of the same is enclosed herewith as Annexure R-3 for kind perusal of this Hon'ble Court. The petitioner/ accused also talking with co-accused, namely Kapil Dev from his mobile no.98124-45523 and 79881-48278 to Mobile no.99922-33003 (co-accused Kapil Dev) at 08 times. The petitioner/ accused also talking with co-accused Arjun Bhola on his mobile no.70154-

89831 from 01.12.2024 to 25.01.2025 at about 290 times. The petitioner/ accused has sold the recovered contraband to co-accused Satbir Singh and Kapil Dev. The copy of call details of mobile no. 98124-45523 and 79881-48278 is enclosed herewith as Annexure R-4 for kind perusal of this Hon'ble Court. The copy of FSL report is also enclosed herewith as Annexure R-5 for kind perusal of this Hon'ble Court.

6. That the petitioner/ accused has Purchased 180 strips and total 2160 capsules AKS Primevon amounting to Rs.260/- each strip and total amount of Rs.46,800/- from co-accused Arjun Bhola and paid the above said amount in cash. The petitioner/ accused had sold the above said intoxicated capsules to co-accused Satbir Singh and Kapil Dev amounting to Rs.50,000/-. The petitioner/ accused has received an amount of Rs.17,500/- in bank account of his relative and remaining amount was received in cash by the petitioner/accused. The copy of bank transaction is enclosed herewith as Annexure R-6 for kind perusal of this Hon'ble Court. The copy of custody certificate of petitioner/ accused is enclosed herewith as Annexure R-7 for kind perusal of this Hon'ble Court."

12. An analysis of the petitioner's stance to rebut the statutory burden under section 37 of the NDPS Act and the investigation conducted clearly indicates the petitioner's connection with the main accused on the basis of call details. The rest depends on the answers obtained during cross-examination of the prosecution's or defence witnesses, if any.

13. The petitioner's counsel argued that the call details cannot be relied upon at the bail stage, and if the said evidence is ignored, then there is only the inadmissible evidence of the disclosure statement.

14. In State Vs. Pallulabid Ahmad Arimutta and Ors., 2022 INSC 26 [MANU/SC/0053/2022], a three-member bench of Hon'ble Supre Court holds as follows:

[10] It has been held in clear terms in Tofan Singh v. State of Tamil Nadu MANU/SC/0797/2020 : (2021) 4 SCC 1, that a confessional statement recorded Under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the Petitioner- NCB, on the basis of the confession/voluntary statements of the Respondents or the co-Accused Under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the Accused or the allegations of tampering of evidence on the part of one of the Respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the Petitioner-NCB seeking cancellation of bail granted to the respective Respondents, are dismissed as meritless.

15. The perusal of the abovementioned order points out that while dealing with a challenge to bail, the Hon'ble Supreme Court did not consider the call details as evidence to cancel the bail. However, no specific directions were issued to Courts subordinate to the Hon'ble Supreme Court to ignore call details as evidence while considering bail.

16. 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.

17. 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.

18. 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

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.

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.

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. 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.

20. A perusal of the bail petition and the documents attached prima facie points towards the petitioner’s involvement as petitioner was in touch with the main accused which is reflected from the bank transaction and call details and does not make out a case for bail. The impact of crime would not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

[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.

22. 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.

[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.

23. Per the custody certificate dated 08.09.2025, the petitioner's custody is 07 months and 09 days, which cannot be considered prolonged.

24. Regarding the delay in the trial, if the trial does not conclude within one year and six months 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 criminal history and shall decide it on changed circumstances and the prolonged trial.

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

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

(ANOOP CHITKARA)
JUDGE

29.09.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: NO.