

CRM-M-42020-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42020-2025
Reserved on: 08.09.2025
Pronounced on: 24.09.2025

Rahul Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. A.P.S. Sandhu, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
99	26.06.2024	STF, District SAS Nagar	21-C/25/29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 r/w 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. Per paragraph 9 of the bail petition, custody certificate dated 06.09.2025 and the reply filed by the State, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	51	27.07.2021	21/61/85 of NDPS Act	Fatehgarh Panjtoor

3. The facts and allegations are taken from the reply filed by the State. On June 26, 2024, based on prior information, the Police seized 500 grams of heroin from inside the vest of co-accused Harish Arora, and at that time the said Harish Arora was the pillion rider on the motorcycle which was driven by the petitioner, who has criminal history of dealing in heroin.
4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
5. The petitioner's counsel refers to the bail petition. It would be relevant to refer to para 7 which reads as follows:

“7. That the story put up by the prosecution has another loop hole, which

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shows that innocent persons are being tried to be roped in the aforesaid incident. The prosecution has cited long list of 14 witnesses and only two witnesses have been examined till date, as such the trial is not likely to conclude in near future.”

6. 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.

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

REASONING:

8. As per paragraph 9A of the reply, the name of the contraband is heroin and its weight is 500 grams.

9. Dealing in 500 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	500 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	200.00%

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)

Specified as small & Commercial in S.2(via) & 2(xxiii) NDPS Act, 1985		
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	*****	

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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 millilitre of substance, if liquid, is contained in every one hundred millilitre 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.
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10. 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.

11. 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.

12. 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.

13. 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

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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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.

14. It shall be relevant to refer to paragraph 8C and 8D of the reply, which read as follows:

“C. The evidence against the petitioner.

The petitioner and co-accused were found to be in conscious possession of commercial quantity of Heroin, as detailed above and he was driving the motorcycle and co accused was sitting as pillion rider from whom 500 gm of heroin was recovered.

D. The role of the petitioner.

That the petitioner was carrying out the illegal business of Heroin with co-accused Harsh Arora.”

15. The petitioner’s difficulty is also the criminal antecedents of case under the NDPS Act.

16. In *State of West Bengal v. Respondent*, MANU/SC/0854/2022 [2022 INSC 691], Hon’ble Supreme Court holds,

[18]. The other segment of the relevant aspects of this case pertains to the conduct of the Respondent. In this regard, a few noticeable facts and factors against him could be summarised thus: he has been involved in as many as 53 criminal cases and had been convicted in two of them; there had been several allegations against him of threatening the Investigating Officers and public servants from time to time; even in the present case too, he had allegedly threatened and misbehaved with the police officers and has been charge-sheeted for offences Under Sections 353 and 506 Indian Penal Code; and on 23.02.2021, he did not appear before the Investigating Officer even after dismissal of his writ petition by the High Court and was arrested at a faraway place. These facts

and factors, prima facie, give rise to the question as to whether the Respondent was entitled to be granted the indulgence of bail. The High Court has taken the view that, prima facie, the Respondent might not have committed the offence he has been charged with in this case; and, looking to his past history, there was nothing on record to suggest that he was likely to commit an offence under the NDPS Act while on bail. The High Court has, in the totality of circumstances, taken the view that the Respondent was entitled for bail on stringent conditions and has imposed additional conditions as noticed hereinbefore.

[18.1]. Although, the past history of the Respondent and even his conduct in relation to the processes concerning the present case give rise to a few questions but, the strong countervailing factor in the present case is the prima facie indication that he is being sought to be framed by concoctions and baseless stories. Another factor noticeable is that the Respondent has not been involved in any NDPS Act case or any akin offence in the past. Interestingly, it is noticed from the material placed on record that nothing of any contraband Article has been recovered from the Respondent or from any place under his exclusive control. This factor further adds on to the doubt as to whether the Respondent had at all been indulgent in narcotics or any contraband? That being the position, the view as taken by the High Court cannot be said to be an altogether unacceptable or impossible view of the matter. Moreover, it cannot be said that the Respondent was consciously seeking to abscond on 23.02.2021 merely because he was found in the night at Purba Bardhaman and not at Kolkata. In any case, the aspect relating to tendency to flee has been duly taken care of with the conditions as imposed by the High Court. The other submissions with reference to the decision in the case of Prasanta Kumar Sarkar (supra) hardly make out a case for interference particularly looking to the nature of evidence sought to be adduced by the prosecution against the Respondent. In this regard, we would hasten to observe that apart from the stringent conditions already imposed by the High Court, it is always open for the prosecution to seek imposition of any further condition or even to seek cancellation of the bail granted to the Respondent, in case of any fault on his part in due adherence to the conditions already imposed.

[19]. In view of the above, we find no reason to consider interference in the order passed by the High Court granting bail to the Respondent with specific conditions.

17. In *Maulana Mohd Amir Rashadi v. State of U.P.*, (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

18. In *Jogindro Bai v. State of Haryana*, CRM-M-51218-2024, decided on 29.11.2024, Neutral Citation No. 2024:PHHC:162096, this Court observed,

[17]. Adjudicating a bail petition of an accused with a prior criminal record places a significant and exacting responsibility on courts to exercise judicial discretion in a manner that is both reasoned balanced to consider the countervailing impacts on the freedom of an accused and that of society and free from arbitrariness, as arbitrariness is antithetical to the rule of law. As a natural corollary, consideration of an accused's criminal history should be limited to cases where convictions have been secured, including those resulting in suspended sentences, and all pending First Information Reports (FIRs) in which the petitioner is formally arraigned as an accused. However, cases that culminated in acquittals, discharges, quashed FIRs, withdrawals of prosecution, or the filing of closure reports by the investigative authorities must be excluded.

[18]. Although the legal system upholds the principle that crime, not the individual, should be condemned, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles, and a recidivist often operates on precarious ground, where the weight of a significant criminal record creates an increasingly challenging terrain. Nonetheless, where the offense for which bail is sought is minor, such that arrest is generally unwarranted, or bail would ordinarily be inevitable, courts must not deny bail solely as a punitive measure intended to serve as a pre-trial deterrent. Such an approach contravenes the judiciary's obligation to uphold the foundational principles of justice and equity in bail proceedings. Another reason that dis-entitles for bail is the criminal antecedents. Considering the bail petition of an accused with a criminal history throws an onerous responsibility upon the courts to act judiciously and reasonably because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecution resulting in acquittal or discharge, or when Courts quashed the FIR, the prosecution stands withdrawn, or the prosecution filed a closure report, cannot be included. Although crime is to be despised and not criminal, for a recidivist, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles. If the petitioner is granted bail, he will likely re-indulge in the crime.

19. 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.

20. 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

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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.

21. 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.

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[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.

22. The petitioner's custody of around 01 year 02 months & 07 days as per custody certificate dated 06.09.2025, cannot be termed prolonged, given the minimum sentence prescribed for the offense.

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

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

(ANOOP CHITKARA)
JUDGE

24.09.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.