

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42203-2025
Reserved on: 08.09.2025
Pronounced on: 19.09.2025

JAMMU SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Dahiya, Advocate for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
09	27.01.2024	Dehlon, District Ludhiana	15/25 and 29 of NDPS Act

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 14 of the bail application and para 13 of the status report, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	30	11.05.2014	15/61/85 of NDPS Act	Dehlon, Ludhiana

3. The facts and allegations are taken from the reply filed by the State. On 27-01-2024, based on prior information, the Police seized 10 quintals of poppy husk from the truck and the petitioner was arrested. Later on from the co-accused one quintal of poppy husk was also recovered. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. It shall be relevant to refer to paragraphs 4 and 5 of the bail petition which read as follows:

“4. That petitioner never tried to run away from the spot, petitioner was merely a cleaner of the truck and the truck was owned and driven by Mukesh Kumar who has been allowed the relief of regular bail by this Hon'ble Court. The said order is appended Annexure P-2 for kind perusal

of this Hon'ble Court.

5. That petitioner had no knowledge of any contraband being transported in the truck and had no relation to alleged recovery and he was merely a poor cleaner and worker hired by the Main accused Mukesh Kumar to clean the truck as and when required. That petitioner was merely surviving on salary of Rs 8500 and belongs to poor strata of the society.”

5. Petitioner's counsel on instructions submits that he has no objection if while granting bail, this Court imposes any stringent conditions and undertakes that petitioner shall not indulge himself in the offence involving the commercial or intermediate quantity or the offence which falls under Section 19/24/27A of NDPS Act. He further submits that if the petitioner involves himself in the said offences, where the sentence imposed is more than 07 years, he has no objection if the State files application for cancellation of his bail.

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

REASONING:

7. It shall be relevant to refer to paragraphs 8 to 11 of the reply which read as follows:

“9. EVIDENCE ON THE BASIS OF WHICH PRESENT PETITIONER WAS ARRAIGNED AS ACCUSED:

That the petitioner was apprehended red-handed at the spot while in control and possession of truck No. PB-11-AQ-9185 containing 50 bags of contraband. His identity was duly established, and his statement under Section 50 NDPS Act was recorded. At the very inception, he disclosed the names of his co-accused Hoshiar Singh @ Soni and Mukesh Kumar as part of the conspiracy to transport and supply the narcotics, which further corroborates his role in the present case.

10. EVIDENCE AGAINST THE PETITIONER:

The present petitioner, Jammu Singh, was apprehended red-handed on 27.01.2024 from truck No. PB-11-AQ-9185 at village Lehra, from which a huge recovery of 50 plastic bags of poppy husk (doda post), each weighing 20 kg, total 10 quintals, was effected, and on being questioned at the spot, he disclosed the names of his co-accused Hoshiar Singh @ Soni and Mukesh Kumar as being jointly involved with him in the supply of narcotics; his personal search was conducted after serving notice under Section 50 NDPS Act, and his statement to that effect was duly recorded; subsequently, representative samples were drawn and duly sealed and later

examined by the Regional Testing Forensic Science Laboratory. Ludhiana vide report No. 196/2024/Toxi/RTFSL/Ldh/Pb dated 27.03.2024, which confirmed that the seized substance was poppy husk containing morphine, meconic acid and other natural alkaloids of opium; the petitioner was arrested on the spot and produced before the learned Magistrate, and during investigation his further disclosure led to the nomination of co-accused Hoshiar Singh @ Soni and Mukesh Kumar, who were later apprehended along with a Swift car bearing a forged number plate and on whose joint disclosure 5 more bags of poppy husk weighing 1 quintal were recovered; thus, the petitioner is not only directly linked to the huge recovery of 10 quintals of poppy husk effected from the truck but also to the wider conspiracy of supply and transportation of contraband, thereby establishing his active role in the commission of the offence under Sections 15, 25, 29, 61, 85 NDPS Act.

11. ROLE OF THE PETITIONER:

That the role of the present petitioner, Jammu Singh, is not peripheral but of a principal accused and active conspirator in the present case. He was apprehended red-handed while in actual physical possession and custody of truck No. PB-11-AQ-9185, which was found loaded with 50 bags of poppy husk (doda post), each weighing 20 kg, totalling 10 quintals of contraband. The petitioner was, therefore, the first link in establishing the chain of recovery of commercial quantity. His statement under Section 50 NDPS Act was duly recorded, and he voluntarily disclosed that the narcotics had been procured and were to be further supplied in connivance with his co-accused Hoshiar Singh @ Soni and Mukesh Kumar. On the basis of his disclosures and subsequent investigation, his associates were arrested on dated 30.01.2025, which further led to the recovery of additional 5 bags of poppy husk weighing 1 quintal and seizure of vehicles used in the transportation of narcotics, including container No. HR-61-C-8017 and Swift car No. HR-50-B-1011, the latter bearing a forged registration plate, thereby also attracting Section 473 IPC. The petitioner's role, therefore, goes beyond mere possession; he is the key conspirator in the procurement, transportation and intended distribution of commercial quantity of narcotics, without permit or licence, which is a grave offence under the NDPS Act. His conduct during the investigation, including disclosure of co-accused and the subsequent recoveries, further demonstrates that he is a crucial part of the larger network engaged in organised drug trafficking.”

8. As per paragraph 8 of the reply, the name of the contraband is poppy husk, and its weight is 11 quintals.

9. Dealing in 1100 kgs of poppy husk in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Poppy straw
Quantity detained	1100 Kg
Punishable U/s	S.15(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	2200.00%

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.	110	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Poppy straw	
Other non-proprietary name	*****	
Chemical Name	*****	
Small Quantity	< 1000 Gram (i.e. equivalent to 1 Kg)	
Commercial Quantity	> 50000 Gram (i.e. equivalent to 50 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.15 & S.2(xviii) NDPS Act, S.O.821(E)	11/14/1985

Sr. No.	S.2(xviii)
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Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom; S. 2(viib)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances; S.2 (xvii) “opium poppy” means— (a) the plant of the species <i>Papaver somniferum</i> L; and (b) the plant of any other species of <i>Papaver</i> from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act; S2. (xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

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

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.

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 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.

(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.

14. The petitioner's arguments did not point toward any material contradictions except to say that he was the cleaner, however, driver Mukesh Kumar already granted bail.

15. 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.

16. 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.

17. 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.

18. 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. Petitioner was apprehended red handed and 10 quintals of poppy husk was recovered, however, from the co-accused, there is recovery of only one quintal. As such, petitioner's case is not on parity. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

19. The petitioner's custody is more than 01 year and 7 months cannot be termed prolonged, given the quantity and minimum sentence prescribed for the offense, which is 10 years.

20. Regarding the delay in the trial, if the trial does not conclude within two years 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.

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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.

23. Petition dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.09.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.