



In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-44060 of 2025

**Reserved On: 23.09.2025
Pronounced On: 25.09.2025**

Kulwinder Singh alias Kinder

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Mr. Ashok Giri, Advocate
for the petitioner(s).

Mr. Rohit Bansal, Senior Deputy Advocate General,
Punjab, for the respondent.

Surya Partap Singh, J.

1. For the commission of offence punishable under Section 21 of NDPS Act, the FIR No. 317 dated 14.12.2024, Police Station City Kapurthala, District Kapurthala, has been lodged and during the course of investigation, the petitioner has been arrested. The petitioner is in custody since 19.12.2024, and therefore, craving for the benefit of bail. This is first petition for bail, filed by the petitioner, under Section 483 of BNSS.

2. In nut-shell, the facts emerging from the record are that the FIR in this case came into being on a detailed information note, submitted by SI Labh Singh. It was stated by the above mentioned SI that on 14.12.2024, he along with other police officials was on patrolling duty in official jeep near Kharbuja Mandi where he spotted a person who was standing besides a white colour Verna car. According to above named police official, when the

above mentioned person noticed that the police party was there, he took out a black colour polythene bag from his pocket and threw it on the ground. According to prosecution, in view of above mentioned suspicious conduct, the above said person was apprehended and the contents of polythene bag were searched. It is the case of prosecution that on search, it was found that in the above mentioned polythene bag, the above said person was carrying 100 grams of heroin. As per prosecution, on recovery of above mentioned contraband, the requisite formalities with regard to search, seizure and arrest were undertaken, and the FIR lodged.

3. The prosecution has further alleged that once the above named person, i.e. the petitioner was arrested, and he was interrogated, during the course of interrogation, he suffered a disclosure statement wherein he revealed that a large quantity of heroin has been kept in hiding by him at his home. It is the case of prosecution that in response to above mentioned disclosure statement when the place of abode of the petitioner was searched, 400 grams of heroin was recovered.

4. Heard.

5. It has been contended on behalf of petitioner that the petitioner is innocent, having no nexus with the crime, and that he has been falsely roped in the present case. According to learned counsel for the petitioner one of the defect which has cropped up in the prosecution case is the fact that the subsequent recovery of contraband planted upon the petitioner has been added to first recovery. As per learned counsel for the petitioner, such a practice is barred under the law.

6. In addition to above, it has also been argued by learned counsel

for the petitioner that if the above mentioned 400 grams of contraband, allegedly recovered is not taken into consideration, the quantity of allegedly recovered contraband, from the possession of the petitioner comes out to be intermediary quantity. As per learned counsel for the petitioner, since the petitioner has already undergone incarceration for a long period of eight months, he is entitled for the benefit of bail.

7. It has also been argued by learned counsel for the petitioner that it is an admitted case of the prosecution that the recovery of 400 grams of heroin had taken place from the rented accommodation of the petitioner and that the above mentioned recovery cannot be attributed to the petitioner.

8. Per contra, the learned State counsel has argued that subsequent recovery of contraband from the possession of the petitioner is from the place of his abode, and that commercial quantity of narcotic substance has been recovered from the possession of the petitioner, and therefore, without satisfying the twin conditions laid down under Section 37 of the NDPS Act, the benefit of bail cannot be afforded to the petitioner.

9. In addition to above, the learned State counsel has also pointed out that the petitioner is a habitual offender and that on earlier occasions also he has been prosecuted at least seven times.

10. In response to the above arguments, the learned counsel for the petitioner has referred to the principle of law laid down by the Hon'ble Supreme Court of India in the case of *Prabhakar Tewari v. State of U.P. and Another* 2020(11) SCC 648 and *Maulana Mohd. Amir Rashadi v. State of U.P. and Another* 2012(2) SCC 382 and argued that the above-mentioned contention of learned State counsel is irrelevant.

11. The record has been perused carefully.

12. In the present case, one of the leg of argument of learned counsel for the petitioner has been that recovery of 400 grams of heroin, pursuant to disclosure statement of the petitioner, cannot be considered in this case which belongs to earlier recovery of 100 grams of heroin. Qua the above mentioned argument, it is relevant to mention here that subsequent recovery of 400 grams of heroin from the possession of petitioner was during the course of investigation of former case and the subsequent recovery in itself is a commercial quantity. Thus, it is hereby held that the above mentioned argument of learned counsel for the petitioner has got no force.

13. Since the recovery of contraband from the possession of petitioner comes within the ambit of commercial quantity, and in the present case, the twin conditions as prescribed under Section 37 of NDPS Act does not stand satisfied, it is hereby held that the petitioner is not entitled for the benefit of bail.

14. Since it has been observed that the petitioner for want of satisfying the twin conditions laid down under Section 37 of NDPS Act, is not entitled for the benefit of bail, the question of past conduct of the petitioner has become redundant.

15. With regard to argument of learned counsel for the petitioner that the recovery from the residential accommodation of the petitioner cannot attributed to him it is relevant to note that the above mentioned argument has got no force in view of the fact that there is no plea of the petitioner that anybody else, except the petitioner, was in

occupation/possession of the place from where 400 grams of heroin was recovered. Otherwise also, since the presence of heroin in the place of abode of petitioner was within his knowledge, the recovery of above mentioned contraband can be attributed to the petitioner only, and none else.

16. As a sequel to observations made in the foregoing paragraphs, it is hereby held that the present petition is devoid of merits and deserves dismissal. Hence the same is hereby dismissed, accordingly.

(Surya Partap Singh)
Judge

September 25, 2025

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No