

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49546-2024
Reserved on: 02.05.2025
Pronounced on: 19.05.2025

Anurag @ Saggu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jagdip Singh Bhatia, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0070	16.11.2023	Talwandi Bhai, District Ferozepur	21 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. In paragraph 15 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 16.11.2023 based on secret information, the police seized 1 kg of Heroin from petitioner and 1 kg Heroin from co-accused's possession. The Investigator claims to have complied with the statutory requirement of NDPS Act, 1985 and CrPC, 1973.
4. Counsel for the petitioner by referring to para no.5 of the petition submits that a day prior to registration of FIR, the police recovered 15 kg of heroin from some other person but instead showed 6-7 kg of heroin, rest was planted upon many persons including petitioner.
5. State counsel submits that this is baseless allegation and petitioner did not file any complaint in this regard. Perusal of the petition does not refer to any complaint filed by the petitioner in this regard, as such petitioner is not entitled to bail on this ground at this stage and in case, petitioner wants to establish this point, he may do so at the time of trial.

6. Petitioner's next ground is that earlier, there was an incident in the house of co-accused Anmol and FIR was registered and at that time, the police officials had enmity with Anmol and tried to apprehend him but when he was not found, they manhandled with his mother and the matter was reported to the police however no action was taken. Now, those police officials are acting on malice. This argument is also meaningless for the reason that there is no documentary evidence annexed to support such FIR or such complaint. Petitioner may prove it during trial by referring to evidence.

7. Petitioner's third ground is that he was falsely implicated and he was forcibly taken away by police officials. Petitioner has handed over a pen drive containing video recording to prove his stand.

8. In this video, a car comes and four people alight from the car out of which two are wearing turbans. They enter in a house. Perusal of the video shows that passengers crossed the road but nobody looked. Subsequently one person reversed the car and a bike also came there. One tall person wearing check shirt was also sitting in the car. A person wearing mehroon shirt with another person wearing check shirt came out and the said person himself opens the door and sits in the car. Other person boarded the car from the other side and in between the last person also came and he also sat on the back side of the car. At that time, one passer by also walked through and he did not notice towards any gesture of any unusual movement. Perusal of the movement of the person who sat in the car did not show that he was perplexed or in any manner prima facie showing unusual movement. After that although some villagers started entering that house which would certainly show that something unusual happened but this Court does not draw any presumption that petitioner was forcibly taken away. In case he was taken under any duress or under threat, neither any such fact has been mentioned in the petition nor was argued, as such petitioner is not entitled to bail on this ground and he is at liberty to prove that at the time of trial. Even if all the arguments of the petitioner are taken as true, still no identity proof has been annexed in the petition to compare the face and other body features of the person in the video to identify him as the petitioner. Further perusal of the video does not reveal face of the person, as such identification could have taken place from his clothes and his body and other features like weight which is not done. Even otherwise, in the video the face of the person is not visible and it is very difficult to identify that it was petitioner or somebody else. To identify the petitioner in the video, either the people who know the petitioner very well, their examination is required or some scientific expert is required. This Court cannot draw any inference by simply looking at the video, as such petitioner is not entitled to bail on this ground also.

9. The next point is that he had filed an application for call details of the police officials vide Annexure P-6 and as such he has shown his false implication.

10. Reference to the reply reveals that police had stopped the petitioner and co-

accused and both were carrying bags and when the bags were opened, each were having around 1 kg of heroin. At the time of investigation, DySP was at the spot. Petitioner has shown faith and trust in the Gazetted Officer and under Section 50 of NDPS Act, such Gazetted Officer was introduced. It is a different factor whether Section 50 of NDPS Act would apply or not but in the present case, Gazetted Officer was present which would prima facie align with the legislative intention of search being conducted in presence of a responsible police officer. Now the burden is on the petitioner to prove otherwise, he is not entitled to bail on this ground.

11. The next point of the petitioner is contradiction in the weight. For that, it is appropriate to refer to para no.3 on merits of the reply dated 12.11.2024 which reads as follows:

“3. That the contents of para No.3 of the petition are a matter of record in so far as the production of the accused along with recovered contraband in the Court of Ld.Illaqa Magistrate, Ferozepur are concerned. Infact the inventory qua the recovered contraband was not typed correctly in the Ld. Trial Court. Thus on coming to know about the same at the later stage, an application for correction of inventory order dated 17.11.2023 was filed by SI Charan Singh, SHO, PS Talwandi Bhai. It was pleaded in the said application that at the time of preparing inventory two parcels of 1 kg each were produced in the Court, but at the time when the seals were broken and parcels were weighed again in the Ld Trial Court, one parcel was found containing the contraband weighing 998 gram and the other parcel was found weighing 1003 gram, but during typing of the order full stop has been wrongly written and 998 gram is written as 99.8 and 1003 was written as 100.3 and after taking the samples the remaining parcels were of 988 gram and 993 gram, but during typing the order it has been written as 89.8 and 90.3. However at that time, since the case property has already been destroyed by the Drug Disposal Committee and as such the Ld. Trial Court has not entertained the said application, but in the Order dated 18.04.2024, it was duly recorded that in the order of disposal of case property. the weight has been correctly mentioned.”

12. Thus the contradiction has been explained for the time being and if the petitioner still has any prejudice, he is at liberty to raise this point at the time of trial. Petitioner's last point is custody which is 01 year, 05 months and 12 days. Counsel for the petitioner did not cite any judicial precedent where the Hon'ble Supreme Court had granted bail for possessing 1 kg of heroin i.e. more than 04 times of commercial quantity.

13. 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.

14. 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),—

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.

15. 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.

16. 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

(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.

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.

17. The petitioner's arguments did not point toward any material contradictions.

18. 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.

19. Per the custody certificate, the petitioner's custody is 01 year, 05 months and 12 days, which cannot be considered prolonged.

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 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.

[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. 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.

23. The petitioner's custody of around 01 year and 06 months cannot be termed prolonged, given the minimum sentence prescribed for the offense, which is 10 years.

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

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25. **Petition dismissed.** Liberty reserved to file fresh after citing judicial precedent of Hon'ble Supreme Court where bail has been granted for possessing similar quantity of similar contraband on similar custody. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.05.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.