

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58274-2024
Reserved on: 07.05.2025
Pronounced on: 16.05.2025

Sajan ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kulwinder Singh Dhillon, Advocate,
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
55	26.06.2024	Raja Sansi, Amritsar	21, 25, 27-A, 29 of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, now 482 BNSS seeking anticipatory bail.

2. As per paragraph 13 of the bail petition, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	41	06.02.2020	21 of NDPS Act	Sadar Amritsar

3. The facts and allegations are being taken from reply dated 01.12.2024 filed by the State. On 26.06.2024, the police party while on patrolling, received a secret information that Gurbir Singh @ Gupreet Singh @ Mani and Joban Kumar, who were involved in massive number of cases were planning the flee the country and had gone to Airport in this regard and the car number was also mentioned. Further, they were also carrying a huge quantity of heroin with them. Based on this information, FIR was registered and subsequently, the police party spotted the car in the car parking of Amritsar International Airport and both the accused were arrested. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. During the investigation, co-accused Joban Kumar suffered a disclosure statement that he had picked the consignment of heroin from Bhikhiwind, Airport Amritsar and Beas on asking of Gurbir Singh @ Gurpreet Singh. He further disclosed about concealing 300 grams of heroin, which was recovered in pursuance to his disclosure statement.

4. During custodial interrogation, co-accused, Joban Kumar in his second disclosure

statement disclosed that he came in touch with Vinay Kumar in the year 2022 and they become good friends and Vinay Kumar was involved in an illegal business of drugs. He further disclosed that he had supplied heroin for about 16 times for Vinay Kumar. Thereafter, he came in touch with Gurbir Singh through Vinay Kumar, who was involved in selling heroin and later he came to know that Vinay Kumar used to sell heroin after purchasing from Gurbir Singh @ Mani. He and Vinay Kumar had brought heroin from Tarn Taran on Aactiva of the present petitioner Sajan and sometimes petitioner used to accompany him to bring the consignment of heroin of Gurbir Singh. He further disclosed that on 25.06.2024, Gurbir Singh and his wife Amanpreet Kaur came at his village Gehri Mandi and Gurbir Singh asked him to bring a bag containing 300 grams of heroin from petitioner Sajan and gave heroin to him for supplying it further. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Judge Special Court, Amritsar, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

5. The petitioner's counsel submits that the petitioner has been falsely implicated in the present FIR; he has not been named in the FIR; his name has been surfaced on the basis of disclosure statement of co-accused; his co-accused has already been granted bail by this Court, vide order dated 25.03.2025 passed in CRM-M-52319-2025. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

6. The State's counsel opposes bail and refers to the reply dated 01.12.2024.

7. It would be appropriate to refer to the following portions of the reply dated 01.12.2024, which reads as follows:

"6. That during the custodial interrogation, the co-accused Joban Kumar suffered an another disclosure statement dated 27.06.2024, disclosing therein that he came in touch with Vinay Kumar in year 2022 and they become good friends and Vinay Kumar was involved in an illegal business of drugs. He further disclosed that he started working for Vinay Kumar and he had supplied heroin for about 16 times for Vinay Kumar. Thereafter, in year 2024, he came in touch with Gurbir Singh through Vinay Kumar, who was involved in selling heroin and later he came to know that Vinay Kumar used to sell heroin after purchasing from Gurbir Singh alias Mani. He further disclosed that he and Vinay Kumar had brought heroin from Tarn Taran on Aactiva of Sajan Singh (petitioner) and sometime Sajan Singh (petitioner) used to accompany him to bring the consignment of heroin of Gurbir Singh. He further disclosed that on 25.06.2024, Gurbir

Singh and his wife Amanpreet Kaur came at his village Gehri Mandi and Gurbir Singh asked him to bring a bag from Sajan (petitioner), who was standing at the outskirts of village and the bag was containing 300 grams of heroin and money and Gurbir Singh kept money with himself and gave heroin to him for supplying it further. He further disclosed that few days back, he brought two bags from unknown person from bus stop Tangra on asking of Gurbir Singh and gave those bags to Gurbir Singh and one bag was containing money and other was containing clothes of Gurbir Singh. Thereafter the co-accused Amanpreet Kaur counted a cash in his presence and it was found to be containing Rs.20 Lakh and thereafter they came to Amritsar Airport after dropping the co-accused Amanpreet Kaur at Sultanwind Road, Amritsar. He further disclosed that the co-accused Amanpreet Kaur used to maintain the record of the earning made from the illegal business of selling drugs and the petitioner used to give them their share.

7. xxx xxx

Role of the petitioner

8. *That the petitioner is actively involved in smuggling and selling heroin along with the co-accused Joban Kumar and Gurbir Singh, who is the main kingpin of illegal business of selling heroin.*

Evidence against the petitioner

9. *That at present the only evidence against the petitioner is a disclosure statement of the co-accused Joban Kumar, which connects the petitioner in the present case and further evidence will be collected after the arrest of the petitioner."*

REASONING:

8. The name of the petitioner has been surfaced on the basis of disclosure statement of co-accused Joban Kumar and the only evidence is in the form of disclosure statement of co-accused Joban Kumar and co-accused Vinay Kumar has already been granted bail by this Court, vide order dated 25.03.2025 passed in CRM-M-52319-2024. Except the disclosure statement, there is no other evidence, such as call details and bank transactions etc, as such, the petitioner is entitled to bail.

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. For now, the petitioner has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the

offense.

11. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. 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 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 offence, and is not likely to commit any offence while on bail. If either of these two 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 that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

- (a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [*Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Para 6].
- (b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [*Customs, New Delhi v. AhmadalievaNodira*, (2004) 3 SCC 549, Para 7].
- (c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [*UOI v. Prateek Shukla*, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].
- (d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [*Union of India v. Niyazuddin SK &Anr*, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].
- (e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [*N.R. Mon v. Md. Nasimuddin*, (2008) 6 SCC 721, Para 9].
- (f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [*Customs, New Delhi v. Ahmadalieva Nodira*, (2004) 3 SCC 549, Para 7].

(g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[31]. 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 subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

12. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, for the purpose of denying bail, the evidence is insufficient.

13. Given the penal provisions invoked, the legal admissibility of evidence collected against the petition, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or pre-trial incarceration.

CONDITIONS:

14. Given the above, without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for anticipatory bail.

15. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

16. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

17. This order is subject to the petitioner's complying with the following terms.

18. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the

petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

19. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

20. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection squad and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days of release from prison and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

21. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

22. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the

Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

23. In Md. Tajiur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon'ble Supreme Court holds in Para 7, "It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences."

24. ***This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.***

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. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

27. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

16.05.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.