

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-65253-2024
Reserved on: 05.05.2025
Pronounced on: 19.05.2025

Yousuf

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Saurav Bhatia, Advocate,
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
161	03.05.2022	Firozpur Jhirka, District Nuh, Haryana	22-C, 27-A, 29, 68-F-61-85 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. However, as per paragraph 16 of the reply/custody certificate, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Year	Offenses	Police Station
1.	328	2011	-	Pahari, District Bharat Rajasthan

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“3. That in nutshell, the facts emanating from the present case are that on 03.05.2022 at around 03.40 PM, ASI Bhupender along with police staff was present at grain market, Firozpur Jhirka on Nuh Sohna road in Govt. vehicle, in the meantime, a secret informer met him and gave information that accused Ansar and Mormal are doing business of supply of contraband (ganja) and they will come in vehicle bearing No.HR-74A-8269. They used to supply the contraband (Cannabis) to the people illegally. The secret informer also informed that the accused can be apprehended, if raid is conducted without loss of time. Therefore, the

higher police officers including the Deputy Superintendent of Police being gazetted officer were informed about the secret information. Thereafter, a raiding party was constituted and they along with the secret informer proceeded towards the spot and barricading was done at the spot. After some time, the aforesaid vehicle was observed coming from the opposite side, which was intercepted and driver and conductor were rounded up on the basis of suspicion. They were inquired about their identification upon which, the driver of the vehicle disclosed his name as Ansar and the cleaner who was with him disclosed his name as Mormal. Notices were given to them u/s 50 of NDPS Act and after obtaining their consent regarding the search of the vehicle, who consented for their search from some gazetted officer upon which Tehsildar, Indri, being Gazetted Officer was called at the spot and the vehicle was searched in the presence of Gazetted officer. It is also pertinent to mention here that 200 bags of black ash were found loaded in the aforesaid truck. However, on further inquiry from them, they disclosed that the contraband has been dropped in a dry dug well in village Sakras. The aforesaid truck driver and conductor were taken to the dug well and ten bags of cannabis were recovered from the dry dug well, which were checked and found to be filled with the contraband as per the experience of the investigating officer, which were weighed and total weight was to the tune in the ten bags was found to be 313 KG 100 Gram Cannabis (Ganja), which was sealed with seal of investigating officer and duty magistrate and taken into possession through memo of recovery. The driver and conductor namely Ansar and Mormal were arrested in the present case. The aforesaid contraband items were produced before the SHO, P.S. Ferozepur Jhirka, who also affixed his seal and same was deposited with MHC of the police station, Ferozepur Jhirka. The present FIR bearing registration no. 161 dated 3-5-2022 u/s 20C-61-85 of NDPS Act was registered in police station, Ferozepur Jhirka and investigation was conducted by the local police, Ferozepur

4. That the accused and contraband items were produced before the Ld. Illaqa Magistrate, Ferozepur Jhirka who taken out the samples 100-100 grams from each bag and got the samples sealed and inventory of the contraband was got prepared and attested by the Illaqa Magistrate. The aforesaid accused namely Ansar and Mormal were interrogated on 13.07.2022 and they suffered their disclosure statement without any pressure, coercion etc. and disclosed the name of co-accused, who were involved in the commission of crime with them. On the basis of statement u/s 161 Cr.P.C. of Ajit and Ajay, the vehicle involved in the crime was

found to be taken on rent by the accused Surender @ Sarpanch, who was got summoned on production warrant as he was confined in district jail Bhondsi in another case, which was registered at District Gurugram. The bank account of accused Surender Sarpanch and his wife was seized. It was also revealed during the course of investigation that several entries of huge amount were found in the bank account of accused Surender @ Sarpanch regarding payment and withdrawal in connection of the illegal and unlawful business of narcotics/contraband. It is also made clear that vehicle No. HR-74A-8269 was owned by Wahid s/o Sahabuddin r/o Mohammadbas, who has given this vehicle to accused Surender @ Sarpanch on rent at the rate of Rs.1,00,000/- per month.

5. That other co-accused were arrested in the present case on 01-8-2022 and they were interrogated by the investigating officer upon which, they have suffered disclosure statement without any pressure and admitted the commission of crime. It is further submitted that challan against the aforesaid accused was submitted in the court of Ld. Illaga Magistrate, Ferozepur Jhirka on 03-01-2023. The charges have been framed against the accused on 22-03-2023 u/s 20C-27A-29 under the NDPS Act.

6. That thereafter, it revealed that accused Surneder @ Sarpanch was in judicial custody in case FIR No.40 of 2021 U/S NDPS Act, P.S. Bilaspur, District Gurugram and he was summoned on production warrant and joined investigation of the present case on 28.07.2022 and he was arrested in the present case. On interrogation, accused Surender @ Sarpanch suffered disclosure statement and admitted his guilt. In pursuance of disclosure statement, he got recovered two mobile phones, one dongle on 29.07.2022, which were taken into possession by the investigating officer in the present case. It is also pertinent to mention here that section 27A NDPS Act was also added in the case after going through the bank account of the accused. The aforesaid accused has also disclosed about the involvement of his co-accused namely Sanjiv Shah s/o Lallu Shah, r/o Bagusarai, Bihar presently residing in Uttam Nagar Delhi. Anwar s/o Mohd. Karim Khan r/o Bada Sagar District Koraput, Orissa, Parveen @ Gora s/o Sahab Singh r/o Haldana, District Panipat, Subhash, Rahul, Sandeep s/o Mattadin r/o Arading District Behror (Rajasthan) Mallu @ Nitin, who have played vital role in the commission of crime of the present case.

7. That co-accused Parveen s/o Sahab Singh r/o Haldana was arrested in the present case on 31.07.2022 and he was interrogated by the investigating officer, upon which he has suffered his disclosure statement and admitted that accused Rahul and Subhash were also with him in the

vehicle, when he visited Orissa to bring the aforesaid accused and he was also involved in the present crime.

8. That co-accused Sanjiv Shah was arrested in the present case on 01.08.2022 and he was interrogated by the investigating officer, who got recovered Aadhar Card, driving license, ATM cards, PAN Cards and Rs.20,800/- which were taken into possession by the investigating officer. He has also got recovered two mobiles phones used in the commission of crime and vehicle no DL-12-CM-80852 along with travel bag with jewellery to gold and silver, which were taken into possession through memo of recovery by the investigating officer. He has also got recovered twenty five mobile phones, dongles and sim cards, which were taken into possession and section 68F was also added in the present case. One duster Car No.DL-08-CAF-8442 and one swift dzire Car No.DL-08-CAW-9697 with mobile phones marka Samsung were got recovered by him, which were taken into possession through memo of recovery.

9. That accused Anwar Khan was arrested in the present case on 05.08.2022 and he was interrogated by the investigating officer upon which he admitted that he is involved in the crime of supplying contraband items. He has got recovered two mobiles phones, which were taken into possession by the investigating officer. He has also disclosed that he has handed over the vehicle with contraband to co-accused Parveen and his co-accused, who were with him. He demarcated the place of loading the contraband.

10. That it is also pertinent to mention here that accused Parveen and Nitin @Mallu were bringing the Canter No.HR-74A-8269 and it was snatched by accused Ansar, Mormal and co-accused. The cannabis weighting approximate 600 KG was taken away by co-accused, who are yet to be arrested and Canter No.HR 74A-8269 was being brought to Mewat by the accused Mormal and Nitin @ Mall who were apprehended by CIA Police Tauru. The accused have got recovered 313 KG 100 Grams Cannabis (Ganja) from a dry dug well, which is situated in the revenue estate of village Sakras, PS Firojpur Jhirka.

11. That during investigation, the record pertaining to the vehicle used in the present case by accused persons as well as the mobile numbers recovered from accused persons was obtained and taken into possession. After completion of investigation, supplementary challan against accused Surender @ Sarpanch, Sanjiv Kumar Shah, Mohammad Anwar Khan, Parveen Kumar and Rahul was submitted in the Court.

12. That on 08.09.2024, accused Sahid Ahmad was arrested in the present case and on interrogation, he suffered disclosure statement and admitted

his guilt. Statements of witnesses were recorded and facts of the case were also verified and from the available evidence and verification of facts, no incriminating evidence was found to effect the arrest of Mustkim son of Samshu, Anish son of Sultan, Mohammad Shakir son of Sultan, Ikkrum son of Jakir, Altap Ahmad @ Wasim son of Ahmad Sahid and Israr son of Bhurwa in the present case.

13. That on 23.09.2024, petitioner/accused Yusuf was arrested in the present case. At the time of arrest, petitioner/accused Yusuf got recovered Bolero vehicle bearing No.RJ-05UA-9026 with its original registration certificate, copy of insurance policy and pollution certificate, which were taken into possession. On interrogation, petitioner suffered disclosure statement and admitted his guilt and also disclosed that on 02.05.2022, at about 5.00 p.m., he was present in his house, when co-accused Mormal came to his house and stated that he along with his relatives has to go to Jaipur. Thereafter, he took the Bolero vehicle bearing No.RJ-05UA-9026 of his brother namely Mustkim without disclosing to his brother and after boarding Mormal in the said vehicle, he while driving the said Bolero vehicle had left for Dosa via Alwar, Rajgarh, Bandi and Sikandra through Agra Jaipur Highway. After talks between Mormal and Ansar, they reached near Khum bridge, where the family members/relatives of said Annar had met them in an i-20 car and they had the talks that the Canter bearing No HR-744-8269 loaded with Ganja was coming from the side of Kota and they after leaving the driver and person accompanying the driver, have to take away the said canter. Thereafter, Ansar with other had boarded in his Bolero vehicle and they reached near Barkheda Toll Plaza, while Ansar and Wahid had gone towards Sonya Toll in the said i-20 car. Thereafter, Ansar told Mormal that the said Canter had passed them, in which there were only two persons, who were coming towards them. Thereafter, while chasing the said Canter in their Bolero and i-20 car had got stopped the said Canter bearing No.HR-74A-8269 and thereafter, Ansar and Mormal had boarded in the canter after alighting the driver and person accompanying the said driver from the said canter. Thereafter, Ansar started driving Canter bearing No.HR-744-8269 and reached Alwar via Manohar Pura Toll plaza. Accused Mormal and Ansar took the Canter bearing No.HR-74A-8269 near the house of Ajim, resident of Sakras, District Nuh via Firozpur Jhirka, where other 4/5 vehicles were already lying parked. After some time, all the occupants of his Bolero vehicle and i-20 car also reached there near the said canter. Thereafter, they removed the plastic cover from the said canter and loaded the plastic bags of Ganja in the Bolero vehicle and i-20 car from the said canter i.e. 16 bags i.e. 8

bags in Bolero and 8 bags in i-20 car and remaining 10 bags were concealed by accused Mormal and Ansar in dry dug well by covering the same with plastic cover. Thereafter, the spot was raided by police and accused Mormal and Ansar were apprehended by police, whereas he along with other co-accused had succeeded in fleeing away from the spot in the said Bolero vehicle. He also disclosed that while fleeing away, he had thrown away the said 08 bags of Ganja from the said Bolero vehicle. Thereafter, Section 201 IPC was invoked in the present case. Statements of witnesses were recorded and other relevant evidence was collected and after completion of investigation, supplementary challan against accused Sahid Ahmad and petitioner/accused Yusuf was submitted in the Court on 02.12.2024 under Sections 20-C/27-A/29/68-F/61/85 NDPS Act and Section 201 IPC and now the said case is pending in the Court of learned Additional Sessions Judge, Nuh for 27.03.2025 for prosecution evidence.”

4. The petitioner's counsel submits that the petitioner was not named in the FIR; no recovery has been effected from him; he has clean antecedents; his name has been surfaced on the basis of disclosure statement of co-accused, which has no evidentiary value and all other co-accused have been granted bail on the ground of custody.
5. 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 his family.
6. The State's counsel opposes bail and submits that the recovery was effected from the petitioner's conscious possession and custody is less. He refers to the reply.
7. It would be appropriate to refer following portions of the reply, which reads as follows:

“15. That accused namely Subhash s/o Moti Ram, Nitin @ Mallu s/o Paras and Sandeep s/o Mattadin are yet to be joined investigation in the present case. It is submitted that petitioner/accused Yusuf had actively participated in the commission of abovementioned offence along with co-accused. He was duly present at the spot when the place of occurrence was raided and co-accused Mormal and Ansar were arrested from the spot along with the contraband. However, petitioner along with co-accused had succeeded in fleeing away from the spot. All these facts have also been admitted by petitioner in his disclosure statement. It is submitted that at the time of arrest, petitioner/accused Yusuf got recovered Bolero vehicle bearing No.RJ-05UA-9026 which was used in committing the crime along with its original registration certificate, copy of insurance policy and

pollution certificate. In this manner, petitioner had actively participated in the commission of abovementioned offence. Petitioner is involved in a serious offence. The case is pending for prosecution evidence and petitioner is clever person and he may run away if enlarge on bail. He may temper the prosecution evidence if, released on bail and as such petitioner is not entitled to any relief and present petition is liable to be dismissed and may kindly be dismissed.

16. xxx xxx

17. That in the present case total 313 Kg. 100 gms contraband i.e. Ganja has been recovered in the present case.”

REASONING:

8. 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.

9. 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.

10. 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

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.

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.

11. 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.

12. The petitioner’s arguments did not point toward any material contradictions.

13. 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.

14. As per the custody certificate dated 02.05.2025, the petitioner's custody is 07 months and 05 days, which cannot be considered prolonged.

15. 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.

16. 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.

17. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and the ground raised for bail is not enough, as such, he 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.

18. The petitioner's custody of around 07 months and 05 days cannot be termed prolonged, given the minimum sentence prescribed for the offense.

19. Regarding the delay in the trial, if the trial does not conclude within one year 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 the criminal history and shall decide it on changed circumstances and the prolonged trial.

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

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

(ANOOP CHITKARA)
JUDGE

19.05.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.