

CRM-M-45631-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45631-2025
Reserved on: 10.09.2025
Pronounced on: 30.09.2025

Kuldeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Krishma Kapoor, Legal aid counsel
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0175	07.09.2024	Ajnala, District Amritsar	21-C, 23, 25, 29/61/85 of NDPS Act (Sections 341(2), 317(2) of BNS 2023 added and Section 25 of NDPS act deleted later on)

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 para 12 of the status report filed by the State, the petitioner has no criminal antecedents.
3. Facts of the case are being taken from reply filed by the State, which reads as follows:-

“2. That the brief and relevant facts of the case are that the aforesaid FIR No. 175 dated 07.09.2024 was registered at the Police station Ajnala, Amritsar (Rural), on the basis of a 'Ruqa' sent by Sub-Inspector Satnam Singh, mentioning therein that during the patrolling and search of bad elements, he received an information from Sh. Prashant Chauhan DC(G), FGT Team, BSF Gurdaspur, that the petitioner and co-accused Gurpreet Singh, Kirpal Singh and Jatinder Singh alias Goli were having links with Pakistan based smugglers and they procure heroin from Pakistan through drones and they have received a consignment of heroin from

CRM-M-45631-2025

Pakistan through drone and all them were going to supply heroin to unknown customer on their motorcycles and if nakabandi is done, the aforesaid can be apprehended with a huge quantity of heroin and the aforesaid information was immediately shared with the deponent. The detailed facts mentioned in the aforesaid Ruqa have been reproduced in the true translation of the FIR No. 175 dated 07.09.2024 have been reproduced in its true translation attached with the petition as Annexure P-1, which may kindly be read as part of the present paragraph as same are not repeated here for the sake of brevity.

3. That on finding the information credible, the joint search of aforesaid accused was initiated and when the police party and BSF Team reached near Sahowal cremation ground, four youngsters, out of which two youngsters were sitting on the motorcycle with a heavy object wrapped in the cloth was lying between them, who on seeing the police party tried to fled away from the spot but they were apprehended by the police and BSF party.

4. That on questioning, the driver disclosed his name as Gurpreet Singh and the pillion rider disclosed his name as Jatinder Singh alias Goli and the youngsters sitting on the ground, while holding some heavy objects in their hands, disclosed their names as Kirpal Singh and Kuldeep Singh (petitioner) and during the checking of the heavy object recovered from Kirpal Singh and Kuldeep Singh (petitioner), heroin weighing 2 kilograms 780 grams and on checking the heavy object recovered from the co-accused Gurpreet Singh and Jatinder Singh heroin weighing 2 kilograms and 764 grams was recovered in the presence of the deponent in compliance with section 50 NDPS Act.”

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS 2023.

5. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody.

6. 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 their family. Counsel further submits that the petitioner would have no objection whatsoever to any stringent conditions that this Court may impose, including that if the petitioner repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, or commits any offence under the NDPS Act, where the quantity involved is more than half of the intermediate, or commercial quantity, or violates S. 19, or 24, or 27-A of the NDPS Act, the State may file an application to revoke this bail before the concerned Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and may do so at their discretion, to which the petitioner shall have no objection.

CRM-M-45631-2025

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

REASONING:

8. As per paragraph 7 of the reply, the contraband is 2 kg 780 grams of heroin.

9. Dealing in 2 kg 780 grams of heroin in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	2 kg 780 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
Quantity type	Commercial

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.	56	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin	
Other non-proprietary name	*****	
Chemical Name	Diacetylmorphine	
Small Quantity	< 5 Gram	
Commercial Quantity	> 250 Gram	

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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.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)	11/14/1985

Sr. No.	2(xvi)(d)
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CRM-M-45631-2025

Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN))	*****
Other non-proprietary name	*****
Chemical Name	<p>2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts;</p> <p>Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that</p> <p>a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage:</p> <p>Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.</p>

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 set forth by the Legislature under Section 37 of the NDPS Act.

11. 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.

12. 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

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.

CRM-M-45631-2025

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.

13. It shall be relevant to extract following portion of the reply which reads as follows:

“Role of the petitioner

5. That as per the prosecution version, the petitioner is actively involved in smuggling heroin through Pakistan and the heroin recovered from the petitioner and the co-accused Kirpal Singh jointly falls within an ambit to commercial category.

The evidence based on which the petitioner was arraigned as an accused

6. That it is humbly submitted that the petitioner was arraigned as an accused in the present case on the basis of the information received from Sh. Prashant Chauhan DC(G), FGT Team, BSF Gurdaspur, who has informed that the petitioner and other co-accused were involved in smuggling heroin from Pakistan.

The evidence against the petitioner

7. That it is humbly submitted that there is a direct recovery of 2 kilograms and 780 grams jointly from the petitioner and co-accused Kirpal Singh by the investigating officer in the presence of the deponent.”

14. The petitioner, allegedly in cohorts with his accomplices and the cross-border drug mafia based in Pakistan, smuggled a large quantity of heroin into India. When a drug mafia has cross-border links with a hostile neighbor, gathering information through investigation across the border becomes almost impossible. Additionally, when evidence points to a cross-border drug mafia, the Court must be cautious to ensure that granting bail for a commercial quantity of drugs does not impair or affect India's sovereignty.

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,

CRM-M-45631-2025

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 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. 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.

20. 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.

CRM-M-45631-2025

[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.

21. 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.

22. The petitioner's custody of around one year as per the custody certificate dated 09.09.2025, cannot be termed prolonged, given the minimum sentence prescribed for the offense.

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

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

(ANOOP CHITKARA)
JUDGE

30.09.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.