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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision: 15.05.2025

Kulwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kuldeep Singh, Advocate
for the petitioner.

Mr. Sukhwinder Singh Rai, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
215	24.12.2024	Sidhwan Bet, District Ludhiana (Rural)	21, 22, 25 of NDPS Act (Section 29 of NDPS Act added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. In paragraph 14 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts and allegations are taken from the status report filed by the State. On 24.12.2024 when the police officials were patrolling, then they noticed one person coming on motorcycle but on seeing the police party tried to turn but his motorcycle slipped and stopped. The person's conduct in trying to flee raised a suspicion in the Investigator's mind that he was carrying some contraband. The Investigator showed his intention to conduct the search of the bag hanging on the handle of the motorcycle and served him a notice under Section 50 of NDPS Act to which petitioner stated that he has no objection if Investigator conducts the search. The search of envelope led to recovery of 70 strips of Lorazepam and in total 700 tablets were recovered. In addition to that, 10 grams of Heroin was also recovered. The Investigator claims to have complied with the mandatory provisions of NDPS Act and arrested Jasvir Singh. In his custodial interrogation, Jasvir Singh revealed that he had purchased the tablets from the petitioner.



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Based on this information, the petitioner was arraigned as an accused.

4. 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 their family.

5. Counsel for the petitioner seeks bail on the following grounds:

- i. petitioner was not named in FIR;
- ii. there is no specific allegation in the FIR;
- iii. No contraband was recovered from possession of the petitioner;
- iv. motorcycle does not belong to the petitioner; and
- v. petitioner was implicated by Jasvir Singh who is his cousin and has taken Rs.25,000/- for delivery of his wife but did not return the loan, then a dispute arose and because of this grudge, Jasvir Singh falsely nominated the petitioner in the present case.

6. State's counsel opposes bail and refers to the status report.

7. It would be appropriate to refer to the following portions of the status report dated 17.2.2025, which read as follows:

"10. That the parawise reply of headings is as under:-

A. That the petitioner has sold the 700 intoxicant tablets of Lorazepam IP 2 mg LOR-2 and 10 grams heroin to accused Jasvir Singh @ Jassi.

B. That there is disclosure statement u/s 23 (2) of BSA of co-accused Jasvir Singh @ Jassi against the petitioner.

C. The name of the tablets is Lorazepam and heroin. Report of FSL has not received so far. So actual weight cannot disclosed without the report of the report.

D. That the petitioner is wanted to the police in this case. In case the present petition of the petitioner is dismissed by this Hon'ble Court then the I.O. will arrest the petitioner and seek police custody for interrogation purpose."

8. On 19.02.2025, this Court had called for another reply and pursuant to that, Senior Superintendent of Police, Ludhiana has filed its status report dated 15.03.2025. It would be appropriate to refer to the relevant portion of status report which reads as follows:

"4. That on receipt of orders dated 19-02-2025 from this Hon'ble Court, report from DSP Jagraon was called. After verifying the facts of this case, DSP Jagraon has submitted his report to the deponent. Apart from the statement u/s 23 (2) BSA of the accused, there is following



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evidence against the petitioner in this case:-

ii) That the petitioner was operating mobile phone no. 83600-79547 and accused Jasvir Singh is operating mobile phone no. 81959-37298 and 8847012955. The call details of these mobile phones has been collected. The call details reveals that during the period from 19-12-2024 to 23-12-2024, the petitioner Kulwinder Singh and accused Jasvir Singh have talked 26 times on these mobile numbers with each other. On 23.12.2024 Le, one day earlier to the date of recovery, there are 3 calls and there were conversation for 3 times between them. At 5:42 PM, there was conversation of 26 seconds and one message was exchanged between the petitioner and accused. Copy of call details is enclosed as Annexure R-2.

iii) That on 12-03-2025, Gagandeep Singh son of Amarjit Singh resident of Dashmesh Nagar, GT Road, Jagraon gave statement to the Investigating Officer that he is doing work at the saloon of Kulwinder Singh @ Bittu son of Jeet Singh r/o Raikpur Arraian for the last 7-8 months. He knew Jasvir Singh @ Jassi s/o Nanak Singh who is friend of Kulwinder Singh Bittu and who used to visit the saloon and they are both friends. True Translation copy of the statement is enclosed as Annexure R-3.”

9. The investigation is supported by call details which are annexed with the status report as Annexure R-2. Perusal of investigation clearly points out towards petitioner’s involvement. There is no explanation of mobile conversation prima facie connecting the petitioner with the main accused.

10. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act.

11. In State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991, wherein the Hon’ble Supreme Court holds,

[8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

[9]. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

12. The quantity of heroin that was seized falls in the commercial category. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences involving commercial quantity shall be released on

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.



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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 offence and is not likely to commit any offence 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 offence punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

13. 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.

14. 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. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.



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15. The quantity involved is commercial, and the burden to satisfy the rigor of condition of Section 37 of the NDPS Act was on the petitioner, which he did not discharge to the satisfaction of the statutory requirements. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for anticipatory bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

16. 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.

17. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union of India v. Padam Narain Aggarwal* (2008) 13 SCC 305].

18. 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.

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

20. **Petition dismissed.** Interim orders are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

15.05.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.