

CRM-M-27810-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-27810-2025  
Reserved on: 02.09.2025  
Pronounced on: 25.09.2025

Vikram Singh alias Vicky

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Karandeep S. Sidhu, Advocate  
for the petitioner.

Ms. Pooja Nayar Sharma, DAG, Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
99	26.10.2024	Sadar Jalalabad, District Fazilka	21 of NDPS Act (Section 29 of NDPS Act added vide GD No.16 dated 16.04.2025)

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 Note 4 of the bail petition as well as custody certificate dated 31.08.2025, the petitioner has no criminal antecedents.

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

*“That the present FIR was registered as per letter of Company Commander F BN BSF BOP Tahliwala, Fazilka dated 26.10.2024 wherein it was stated that on 25.10.2024 at 2210 hrs information about the suspicious was received in the depth area of BOP Tahliwala under the jurisdiction of 52 Bn BSF. During search operation, Angrej singh son of Puran singh resident of Hazara Ram Singh Wala and Vikram (petitioner) son of Jaswant singh resident of dhani Dhab Khushal Joyia were apprehended by authorities, while three others managed to escape. During initial questioning, both the said suspect admitted that this was their first attempt at locating a consignment, which had reportedly been lost in the paddy field. Aforesaid persons further disclosed that they were*

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*sent to find the missing consignment by their three associates namely Ashok Singh son of Kulwant Singh resident of village Chak Arniwala, Aman alias Amandeep Singh son of Baljit Singh resident of village Hazara Ram Singh wala and one unknown person. As per information derived from the above apprehended accused, a thorough search was conducted by BSF and 540 grams Heroin was recovered by BSF. Recovered contraband was taken into custody by BSF.*

*b) That as per said letter, initially, FIR No.99 dated 26.10.2024 was registered under section 21 of NDPS Act against present petitioner, Amandeep Singh alias Aman son of Baljit Singh resident of village Hazar Ram Singh wala, Angrej Singh alias Geji son of Puran Singh resident of village Hazara Ram Singh Wala, Ashok Singh son of Kulwant Singh resident of village Chak Arniwala and police station, one Sadar, unknown person at Jalalabad. Aforesaid co-accused Angrej Singh and present petitioner Vikram Singh were arrested by police on 26.10.2024 as per law and the recovered contraband was taken into police custody as per law. But when the recovered contraband was weighed by police on computer weighing machine, it was found to be 527 grams of heroin which was taken into police custody as per law.”*

4. The petitioner's counsel refers to paras 6 to 8 of the bail petition, which reads as follows:

*“6. That admittedly nothing has been recovered from the spot from the petitioner as well as from co-accused. It is pertinent to mention here that the alleged recovery has been effected after search by the BSF officials from the said place for approximate 11 hours, as the same is not possible, thus creates doubt of false implication as well as registration of false case.*

*7. That the petitioner is present petitioner has nothing to do with the alleged recovery effected by the BSF officials. Moreover, it was further alleged in letter itself that one unknown person was also accompanying petitioner and his co-accused, but his details and particulars have not been putforth either by prosecution nor by any apprehending accused. Since it is an apparent that said BOP is situated in village Tehliwala and unknown person is also allegedly to be resident of village Tehliwala therefore no efforts were ever put by BSF officials as well as police officials to identify the same.*

*8. That though the petitioner was apprehended from the place of occurrence, but at the time of said occurrence he was not in possession of*

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*any such contraband as it is admitted, because as per the prosecution story petitioner and co-accused not in possession of any such alleged contraband, they were allegedly searching for the same that too admittedly on the asking of Aman who is a juvenile. No any contraband has been recovered from the physical possession of the petitioner. Thus, it clearly shows that the petitioner has been falsely implicated in the present case.”*

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 their family.

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

REASONING:

7. As per paragraph 3(b) of the reply, the name of the contraband is heroin and its weight is 527 grams.

8. Dealing in 527 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	527 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	210.80%

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 &amp; Commercial in S.2(viia) &amp; 2(xviii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
-		
Sr. No.	56	

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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)
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 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>

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

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conditions put in place by the Legislature under Section 37 of the NDPS Act.

10. Section 37<sup>1</sup> 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.

11. 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.

12. 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

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<sup>1</sup> **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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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.

13. It shall be also appropriate to refer to the following paras of the reply:

**“EVIDENCE AGAINST PETITIONER**

*6. That disclosure statements during initial questioning of co-accused petitioner Vikram singh and Angrej singh, and recovery of 527 grams Heroin are sufficient to establish the guilt of petitioner. From the said statements, it is unequivocally evident that the present petitioner is actively involved in drug trade and cross border smuggling of Heroin.*

**ROLE OF PETITIONER:**

*7. That the role of petitioner in commission of offence has duly the been established by disclosure statement of the petitioner himself wherein he categorically disclosed that the co-accused Ashok Singh and Amandeep had asked him accompany them to pick up the smuggled Heroin near Indo-Pak border and had also offered them to pay considerable amount in lieu thereof. The petitioner and co-accused Angrej Singh were apprehended by BSF followed by recovery of 527 gram Heroin, while co-accused Ashok Singh and co-accused Aman alias Amandeep singh succeeded to flee away. Therefore, the petitioner cannot shirk his criminal liability.”*

14. 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.

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

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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.

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[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 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 10 months & 02 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 and six months 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 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, are disposed of.

(ANOOP CHITKARA)  
JUDGE

25.09.2025

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Whether speaking/reasoned: Yes

Whether reportable: No.