

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

CRM-M-2272-2025
Reserved on: 14.07.2025
Pronounced on: 31.07.2025

Shankar Lal Gurjar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jainainder Saini, Advocate
Ms. Shilpa Saini, Advocate
for the petitioner.

Ms. Trishanjali Sharma, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
761	04.12.2021	Azad Nagar, District Hisar	15(c) of NDPS Act (Section 27-A 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. Per paragraph 20 of the bail petition, the petitioner has no criminal antecedents.
3. The facts and allegations are taken from the status report filed by the State. On 04.12.2021, when the police party was patrolling in the government vehicle, then they received a secret information that Sunder Singh son of Kalu Ram resident of Kachnari, District Jaipur (Rajasthan) who deals in narcotics is carrying a huge quantity of the same in the truck number which was provided. After that, the investigator claims to have complied with the procedures of NDPS Act and CrPC and waited for the truck. He spotted with truck and police was able to recover 199 kilogram and 615 grams of Doda Chura Post and 75 kilograms and 885 grams of poppy husk and he was arrested.
4. During the custodial interrogation, Sunder Singh told that he had purchased the said poppy straw from Kanha Ram son of Chagan Lal. Subsequently the police arraigned him as an accused. However, he could not be arrested and was able to file an anticipatory bail petition, which was rejected by the trial court and now feeling aggrieved he came up

before this court.

5. I have heard counsel for the petitioner at length and gone through the record.

6. 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.

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

REASONING:

8. On 27.01.2025, a Co-ordinate Bench of this Court had granted interim bail to the petitioner on the grounds that there is no evidence that Kanha Ram is the alias name of the petitioner i.e. Shankar Lal Gurjar and the Court was of the opinion that a slight doubt had come up and after granting interim bail, the matter was adjourned. On 19.05.2025, when the matter was placed before this Court, the Court was not satisfied with the reply filed earlier and wanted a fresh reply on the grounds as mentioned in the said order. Earlier, the reply dated 22.01.2025 was silent for so many aspects except the phone number and as such, there was a necessity to call for further investigations. However, in the previous reply, one certificate had been attached given by Sarpanch of Gram Panchayat Batoli Gujran Tehsil Dunglu, District Chittorgarh (Rajasthan), in which it was mentioned that Smt. Thappu Bai is the head of the family and name of her husband was Chagan Lal and they have three sons namely Shankar Lal Gurjar and two others. In addition to them, they had no other children. As such, it was clear that out of three children, only Shankar Lal was arraigned as an accused and not the other two persons. This Court is not purposely mentioning the names of the two persons because they are not accused. The case of the petitioner was that he was not Kanha but Shankar Lal and there is no evidence that Kanha is Shankar Lal. After that, a fresh reply was filed by Inspector which is dated 03.07.2025.

9. It shall be appropriate to refer to the following portion of status report dated 03.07.2025 which reads as follows:

"7. That it is relevant to mention here that to ascertain further facts the investigating officer obtained call details of the mobile No. 99292xxxxx & 89185xxxxx (accused Sunder), 63786xxxxx (petitioner/accused Kanha Ram) and it is transpired that they were continue in touch with each other on 01.12.2021 & 02.12.2021. That CAF ID of the mobile No. 63786-xxxxx was also obtained which is found to be in the name of Chhagan Lal Gurjar i.e. father of petitioner/accused. Copies of Call details record & CAF id is appended herewith as Annexure R-2.

8. That it is pertinent to mention here that even to ascertain the fact that whether the petitioner/accused is known as Kanha Ram the

father of petitioner/accused statement was recorded and it is stated by him that the mobile No.63786-xxxxx is registered in his name and the same is used by his son namely Shankar Lal who is also known as Kanha. Copy of statement of the Chagan Lal is appended herewith as Annexure R-3.

9. That it is pertinent to mention here that from disclosure statement of the accused Sundar Lal, perusal of the call record, CAF Id and statement of the father of petitioner/accused it can be stated that the petitioner/accused is also known as the Kanha Ram and is one of the accused in the present case.

10. That in compliance of order dated 27.01.2025 passed by this Hon'ble High Court the petitioner/accused was joined in investigation of the case on 12.02.2025 and his disclosure statement was recorded. In disclosure statement the petitioner/accused disclosed about his involvement in occurrence of offence and stated that accused Sunder Singh have to pay an amount of Rs.4,00,000/- after selling the Doda Post, however, he was apprehended by the police alongwith the contraband. It is disclosed by the petitioner/accused that he had purchased the 75 kg poppy straw from unknown truck driver. Copy of disclosure statement of the petitioner/accused is appended herewith as Annexure R-4.”

10. An analysis of the investigation conducted so far clearly points out that Kanha Ram was none else than the petitioner. There cannot be any doubt as the call details connect him with the main accused and the certificate given by the Sarpanch. The petitioner took advantage of his alias name and it is not that he was being framed to save Kahna Ram. The digital evidence has totally defied such a stand. Thus, it is not a case of anticipatory bail.

11. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act and the petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

12. Given the above, the petitioner has, prima facie, failed to satisfy the conditions of section 37 of the NDPS Act to make a case for bail.

13. 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.

14. 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.

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

CRM-M-2272-2025

16. **Petition dismissed.** Interim dated 27.01.2025 is recalled with immediate effect.
All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

31.07.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.