

CRM-M-56623-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56623-2024
Reserved on: 01.08.2025
Pronounced on: 21.08.2025

Mohd. Aamir @ Bawa

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Kamlesh, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
208	07.10.2022	City 1, Malerkotla, Distt. Malerkotla	22/29/61/85 of NDPS Act (Section 29 added lateron)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, seeking regular bail.

2. Per paragraph 8 of the bail petition, para 14 of the status report as well as custody certificate dated 31.07.2025, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	48	04.07.2022	21, 29/61/85 of NDPS Act	NCB Chandigarh
2	211	09.10.2022	21, 29/61/85 of NDPS Act	City-1, Malerkotla
3	148	20.06.2025	21, 22/61/85 of NDPS Act	City-2, Malerkotla
4	46	03.06.2019	21 of NDPS Act	STF 4
5	168	02.12.2020	21, 22, 29 of NDPS Act	City 1, Malerkotla

3. Vide order dated 12.12.2024, petitioner was granted interim bail, which is continuing till date.

4. The facts and allegations are taken from the reply filed by the State. On 07.10.2022 based on prior information, the Police seized 65 strips of Etizolam (total 650 tablets) and 37 strips of Alprasafe (Total 370 tablets) from the possession of co-accused Tanvir Ahmed @ Ena. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. During the investigation, said Tanvir Ahmed @ Ena disclosed the petitioner as the supplier of the drugs; based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.

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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.
7. The State's counsel opposes bail and refers to the reply.
8. The petitioner was granted interim protection after a custody period of 01 year, 08 months & 28 days as per custody certificate dated 31.07.2025 and at that time, the Court was also aware of the quantity being commercial. During the interregnum, there is no allegation that he had intimidated the witnesses, hampered the investigation, or did not join the trial.
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 conditions put in place by the Legislature under Section 37 of the NDPS Act.
10. 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.

[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

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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.

11. Thus, the evidence collected so far consists of disclosure statements and the petitioner's confession without discovering any facts. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of BSA, 2023.

12. In *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

13. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband. No other evidence is collected at this stage to connect the petitioner with the main accused. Thus, there is no justification to deny bail. Consequently, the petitioner has satisfied the first rider of section 37 of the NDPS Act. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

14. For now, the petitioner has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Petitioner is on interim bail and there is no allegation against the petitioner that he hampered with the evidence/witness, therefore there is no justification to discontinue the interim bail.

15. Given above, petition is allowed and order dated 12.12.2024 is made absolute. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

21.08.2025

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Whether speaking/reasoned: Yes

Whether reportable: No.