

2025:PHHC:033296



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

**CRM M-58355 of 2024 (O&M)**

**Date of Decision: 04.03.2025**

Nicholas Chidebere Paul

...Petitioner

Versus

State of Haryana

... Respondent

**CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. Mohd. Shahid Hussain, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

**N.S.SHEKHAWAT, J. (Oral)**

1. The petitioner has filed the present petition under Section 483 of the BNSS with a prayer to grant regular bail to him in case FIR No.109 dated 30.03.2020 (Annexure P-1) registered under Sections 21-C, 29-61-85 of NDPS Act and Sections 188, 269, 270 and 419 of IPC and Sections 13 and 14 of Foreigner Act No. 31, 1946 at Police Station Sadar Tauru, District Nuh.

2. The FIR in the present case was registered on the basis of the statement of Katar Singh SI, CIA Tauru and the relevant extract of the FIR has been reproduced below:-

*“To, the SHO Police Station Tauru, Jai Hind, today I SI along with my companion colloques HC Satish Kumar No. 127/Nuh, Constable Shri Krishna No. 1168/Jind, Constable Aman 327/Nuh, Constable Rakesh Kumar*

995/Nuh, Constable Ashok 3/494 in a government vehicle HR-27-K-4164 along with driver Constable Neeraj 403/Nuh were present at KMP toll crossing for law and order duty lockdown Corona virus, when an informer informed me that Rafiq son of Naseer and Mubarik son of Aneesh, residents of Shikarpur, who consume and sell Heroin (Chitta), today both of them will buy Heroin from Palwal on motorcycle No. HR 96 7666 bearing color black brand Splender Plus and will go towards village Shikarpur through the unpaved road alongside KMP. If blockade is made on this rough road, the accused can be caught along with Heroin (narcotic substance). Believing the information to be reliable, I, SI informed his colleagues about the tip-off and prepared a raiding party and started a blockade on the rough road along the KMP near village Dhulawat. Head Constable Satish Kumar is accompanied by a Police party with his laptop and portable printer. An attempt was made to get public witnesses at the blockade site, but due to lockdown, public witness was available. I SI prepared a written notice under section 42 NDPS Act separately and informed Tehsildar Sahab Tauru Singh Shri Manmohan on telephone No. 9999009958 from my personal phone 9466767518 about the situation and asked for coming the spot. After a blockade about 10 minutes, two young men were seen coming on a motorcycle from the Palwal side on the rough road along the KMP as per the description. When I tried to stop them with the help of my colleagues, both the accused took the motorcycle to the side and speed away. But after 50 meters, due to the high speed and the rough road, both the accused slipped

along with the motorcycle and fell on the right side of rough road and got minor injuries. They were controlled with the help of fellow colleagues and when asked for their names and addresses, the motorcyclist told his name as Rafiq son of Naseer and the person sitting behind told his name as Mubarik son of Aneesh, residents of Shikarpur. I gave notices under section 50 of NDPS Act. On the notices, both of the accused agreed to get themselves searched in the presence of a Civil Gazetted Officer. At the same time, Mr. Manmohan Singh Tehsildar Tauru along with the staff arrived at the spot in a government vehicle. He was informed about the situation. Who served notice under section 42 and 50 of NDPS Act. After getting a separate body search done by me, the Tehsildar Sahab instructed me to search the two accused separately. Thereafter, first of all, I searched the motorcyclist Rafiq son Naseer and recovered a cream of colored substance wrapped in blue polythene from the right pocket of his pant. As per my experience, when it was packed, it was found to be Heroin (Chitta). When it was weighed without the polythene with the electric weighing scale, the total quantity of Heroin was 10.080 grams. After putting it in the same polythene, a separate bag was prepared from the plastic box and the bag was stamped with the stamp SK/3. Thereafter, I ask the name and address of the person sitting behind, who told his name as Mubarik son of Aneesh. When he was searched, a cream colored substance wrapped in white polythene was recovered from the front pocket of his shirt. On checking it, it was packed, it was found to be Heroin (Chitta) as per my experience. When it was weighed

*without the polythene with the electric weighing scale, it was found to be 10.850 grams of Heroin. After putting it in the same polythene, a separate bag was prepared from the plastic box and the bag was stamped with the stamp SK/3. After use, the seal be kept and same was handed over to me SI Satish Kumar No 127. The Tehsildar also stamped both the bags and sample seals with his seal as RK/1 and photography was done at the spot by constable Aman 327/Nuh with his mobile. Both the bags along with sample seal and recovered motorcycle Splender Plus No. HR-96-7666 were taken into police possession. The witnesses and the accused put their two signatures on bundles and also verified by the Tehsildar, Tauru. Tehsildar along with his staff, gave necessary instructions to me and left the spot in the government vehicle. The accused Rafiq son of Naseer resident Shikarpur having in his possession 10.080 grams Heroin resident and Mubarik of son of Shikarpur having Aneesh in his possession 10.850 grams Heroin, total 20.930 grams of Heroin, have committed the crime under section 21 C-61-85 of NDPS Act. On which after writing the report, Constable Rakesh Kumar is being sent to police station to register the case. Later, the case number should be informed through the slip or another investigating officer should be sent to the scene of incident. I along with my colleagues, accused, bundles of the case along with government vehicle, busy in investigation of the case. Today, at rough road along KMP in revenue estate of village Dhulawat. Sd/- Katar Singh SI CIA Tauru dated 30.03.2020 07:15 PM..”*

3. Learned counsel for the petitioner contends that the petitioner, who is a Nigerian, has been falsely involved in the present case by the local police. In fact, the petitioner was not related to the other accused in any manner and general and vague allegations have been leveled against him. He further contends that initially the police has arrested Rafiq and Mubarik, co-accused and the names of the petitioner and the other accused were disclosed by them. Still further, even no independent witness was associated by the police at the time of effecting the recovery from the petitioner. Still further, the petitioner was arrested in the present case on 03.04.2020 and is in custody since then. Since, the petitioner is in custody for a longer period and the trial has not concluded, he may be ordered to be released on bail in the present case.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that initially the police had apprehended Rafiq and Mubarik, co-accused, from whose possession, a huge quantity of heroin was recovered. During their custody, both the co-accused suffered their respective disclosure statements, which led to the arrest of Sonu @ Lokesh, co-accused. Sonu @ Lokesh disclosed that he had purchased the contraband from the present petitioner. Consequently, the police raided the petitioner and another accused, namely, AC Henary and Emmuel, who were found sitting on

a Scooty bearing registration No.DL-95BG-6926 alongwith hand bags. When the search was conducted, 427 grams of Heroin was recovered from them, which is commercial in quantity. Consequently, the embargo of Section 37 of the NDPS Act would apply and the petition deserves to be dismissed by this Court.

5. I have heard learned counsel for the parties and perused the record.

6. From the evidence acquired from the course of investigation, it is apparent that the petitioner and his co-accused were the suppliers of heroin and even after their arrest, 427 grams of heroin was recovered from the petitioner and his co-accused, which is commercial quantity. Even, the learned State counsel is correct in making a submission that the provisions contained in Section 37 of the NDPS Act would apply and bail cannot be granted unless both the conditions provided under Section 37 of the NDPS Act are satisfied. Moreover, it has also been found during the investigation that the petitioner and his co-accused were running a drug racket in this part of the State and no leniency can be shown towards them. Moreover, the prosecution has already examined 17 witnesses and the trial is stated to be at the fag end.

7. Still further, the Hon'ble Supreme Court of India has held in the matter of *State of Kerala etc. Vs. Rajesh Etc., 2020(1) RCR (Criminal) 818: 2020 AIR Supreme Court 721* as follows:-

18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus:-

*“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.”*

*(emphasis supplied)*

19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In **Union of India Vs. Ram Samujh and Ors. 1999(4) RCR (Criminal) 93: 1999(9) SCC 429**, it has been elaborated as under:—

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death—blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v. Chief Secy., Union Territory of Goa [1989(2) RCR (Criminal) 505: [(1990) 1 SCC 95]** as under:

24. With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug

*addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.*

*8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,*

*(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and*

*(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent—accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”*

*20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also*

*subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.*

*21. 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. 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. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.*

*22. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act”.*

8. In view of the above discussion, the present petition is ordered to be dismissed.

9. All pending applications, if any, are disposed off, accordingly.

04.03.2025

(N.S.SHEKHAWAT)

amit rana

**JUDGE**

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