

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41110-2025
Reserved on: 10.09.2025
Pronounced on: 29.09.2025

Ajaz @ Eja

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Saifuddin Shams, Advocate
Ms. Shabnam Shams, Advocate
Ms. Safiya Shams, Advocate and
Mr. Ashish Ranjan, Advocate
for the petitioner.

Mr. Atul Gaur, AAG, Haryana

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
310	21.08.2024	City Sohna, District Gurugram	20 (b) (ii) (C) of NDPS Act

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 paragraph 16 of the bail petition, the petitioner has no criminal antecedents.
3. The facts and allegations are taken from para 3 of the status report filed by the State, which reads as follows:

“3. That succinctly stated, the case of the prosecution is that secret information was received that one Jahir alongwith his three be two sacks friends were boarded on two motor cycles would be coming from Tauru to Sohna and therewould two sacks in his possession having psychotropic substance. On the basis of secret information, the said place was barricaded. On 21.08.2024 two motor-cycles came which two-2 boys were boarded. The first motor-cycle, which was being drive by two boys, had kept a polythene bag in between and the second motor-cycle which was following was having two polythene bags in between the two occupants of the motor cycle. On seeing the police party, the motorcyclist tried to take a U-turn but one of the boys who was riding pillion fell down on the road alongwith the plastic bag. The motorcyclist who were following them threw the two bags on the spot. The accused who fell down on the road was arrested who revealed his name as Jahir. Necessary procedural formalities

were completed and upon checking, Ganja was found in all the three polythene bags. The three bags were weighed independently and their weights were 18 kg 400 grams, 16 kg 450 grams and 14 kg 370 grams, total weight equalled to 49 kg 220 grams. The above said Jahir was arrested upon receipt of appropriate incriminating evidence against him. Subsequently, during the course of interrogation, arrested accused Jahir revealed of the other co-accused in the commission of the offence the name as Ajaz @ Eja (petitioner herein), Nemu @ Namudeen and one unknown person. Accordingly, FIR aforementioned was registered and investigation was taken up in the matter.”

4. During custodial interrogation, the main accused, confessed before the Police officer that the petitioner was the person who was also on the motorbike. Based on such confession before the police, the petitioner was arraigned as an accused.

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 status report.

7. It would be appropriate to refer to paras 7 & 9 of the status report dated 08.09.2025, which read as follows:

“7. That during the course of further investigation, on 20.01.2025, the petitioner was apprehended and was joined in the investigation and was arrested upon receipt of appropriate incriminating evidence against him. He was interrogated while being in custody and upon interrogation, he suffered his disclosure admitting statement his involvement in the commission of present crime. On 22.01.2025, petitioner suffered his amended disclosure statement. In pursuance thereof, he got demarcated the place of occur and got recovered one motorcycle bearing registration number HR-96-A-1519 used in the commission of present crime. which was taken into police possession. The true translated reproduction of the disclosure statement of the petitioner is being appended to along with the present as Annexure R-1.

9. That as per the investigation, the petitioner was involved in serious crime of selling narcotics along with co-accused Nemu and the Jahir. The petitioner had procured the contraband from one truck driver on Sohna Tauru road for a consideration of Rs. 1,50,000/- and with a view to sell the same in the area of district Gurugram, he along with Gurugram. the co-accused were coming to when the co-accused Jahir was apprehended with the narcotic substance by the police. The vehicle used in the commission of present crime has been recovered from the petitioner. Further, the quantity involved in the present crime is commercial in nature.”

8. As per paragraph 3 of the status report, the contraband is 49.220 kgs of ganja.

9. Dealing in 49.220 kgs of ganja in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Ganja/ Bhang Patti
Quantity detained	49.22 Kg
Punishable U/s	S.20(b)(ii)C of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	246.10%

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 & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
Sr. No.	55	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN))	Ganja	
Other non-proprietary name	*****	
Chemical Name	*****	
Small Quantity	< 1000 Gram (i.e. equivalent to 1 Kg)	
Commercial Quantity	> 20000 Gram (i.e. equivalent to 20 Kg)	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	2(iii)(b) NDPS Act, 1985, S.O.821(E)	11/14/1985

Sr. No.	2(iii)(b)	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN))	*****	
Other non-proprietary name	*****	
Chemical Name	S.2(iii)(b) ganja, that is, the flowering or	

	<p>fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; S. 2(viiiib)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means—</p> <p>(i) cultivating any coca plant or gathering any portion of coca plant;</p> <p>(ii) cultivating the opium poppy or any cannabis plant;</p> <p>(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;</p>
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10. 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.

11. An analysis of the petitioner’s stance to rebut the statutory burden under section 37 of the NDPS Act and the investigation conducted clearly indicates the petitioner’s connection with the main accused. The rest depends on the answers obtained during cross-examination of the prosecution’s or defence witnesses, if any.

12. Section 37¹ 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.

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.

13. 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.

15. 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.

16. A perusal of the bail petition and the documents attached prima facie points towards the petitioner’s involvement. Petitioner was driving the motorcycle which was registered in the name of petitioner’s brother and does not make out a case for bail. The impact of crime would not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

17. 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 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.

18. 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.

[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.

19. Per the custody certificate dated 09.09.2025, the petitioner's custody is 07 months and 17 days, which cannot be considered prolonged.

20. Regarding the delay in the trial, if the trial does not conclude within one year 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.

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

22. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

29.09.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: NO.