

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

2025:PHHC:096821



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CRM-M-35760-2025

Date of decision: 31.07.2025

Amit Kashyap @ Goldy

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Mohit Nehra, Advocate for the petitioner.

Mr. Gurpartap S. Bhullar, AAG, Punjab.

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.22 dated 03.03.2025 registered for the offences punishable under Section 21(b), 27A, 29/61/85 of NDPS Act, 1985 (Section 111 of BNS, 2023 added lateron vide Rapat No.18 dated 05.03.2025) at Police Station Division No.2, District Pathankot.

2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“To the S.H.O. Police Station, Division No.2, Pathankot, Jai Hind. Today, I, SI along with ASI Bodh Raj, 1219/PTK, PHC Kasturi Lal, 656/PTK, PHG Sumit Thakur, 13110, getting into Government vehicle No.PB-65-BG-5162, taking along the Laptop. Investigation kit for conducting raid and for patrolling and checking with regard to the duties of RSS Branch, were leaving the Police Station, passing through Selly Road, Patel Chowk, Gandhi Mohalla etc. patrolling on foot through

Mohalla Guru Nanakpura, Rampura, reached the crossing, then from front side, a man having covered himself with a 'Lohi, was seen coming on foot and looking at the Police party in front of him, returned back taking steps in haste, who was controlled by me, SI, on doubting on him, with the help of colleagues. Then I enquired about hisname, upon asking, he told his name Amit Kashyap @ Goldy s/o Krishan Kashyap, resident of Mohalla Guru Nanak Nagar, Rampura, Pathankot. Upon this, I SI, having doubt on him, giving him notice u/s 50 NDPS, informed him and disclosed him about my identity and then told that I, SI Rajesh Kumar NO.1314/PTK, am posted as Investigating Officer at Police Station, Division No.2, Pathankot. I suspect that you have some objectionable substance, you have to be searched. But you have a legal right that you can get yourself searched from any Magistrate or a gazette officer who can be called on the spot just now. Thereafter, Amit Kashyap @ Goldy said to me, I have full confidence on you, you can search my person. Upon this, a separate memo of consent by the above said Goldy was prepared and before conducting search of above said Goldy, an effort was made to associate a public witness to the Police party, but there being, neighbourhood matter (mohalladari), no person was ready to associate with the Police party. Upon this, I conducted search of Amit Kashyap @ Goldy, an effort was made to associate the public servant on duty, but being 'Mohalladari', nobody could be got associated with the Police party as a witness. Upon this, I, SI, in the presence of my colleagues, conducted search of Amit Kashyap @ Goldy, from pocket of his worn Pant, a Computer Kanda, colour silver, in one black colour polythene cover which was given a knot, containing some weighty substance and from left pocket f his worn shirt. notes of Indian currency were recovered. By opening black colour polythene cover, which was checked and from which some intoxicating substance like heroin, was recovered. I. SI by taking out the Computer Kanda, weighed the Heroin like intoxicating substance, it weighed to be 10 grams along with the Polythene cover which was put by me,SI in a plastic box and prepared a separate parcel of the plastic box. Then the counting of the Indian currency notes was done,

then one note of Rs.500/-, 4 notes of Rs.200/- each and 9 notes of Rs.100/- each total Rs.2200/- were recovered. All Indian currency notes were also put in a plastic box and a separate parcel was prepared and a separate parcel of the recovered small Computer Kanda (weight scale) was also prepared. I SI duly sealed the above 10 grams intoxicating substance like heroin parcel, drug money parcel and the small computer kanda parcel, with his letters R.K. the total 1/1/1/ and through a separate memo, took in Police custody as an evidence. A sample seal was prepared. The seal after use was handed over to ASI Bodh raj, 1249/PTK. The accused Amit Kashyap @ Goldy, by keeping in his possession 10gm. Intoxicating substance like heroin including the black colour polythene cover, Rs.2200/- Indian currency notes as drug money and a computer kanda (weight scale), has committed offence u/s 27(A)-61-86-NDPS Act. Upon this, by writing a message, is being sent to the Police Station to get the FIR registered, by hand through PHG Sumit Thakur, 13110. After registration of FIR, the number of the FIR may be apprised of. After issuing special reports, be sent to the Illaqa Magistrate and to the higher officers. An intimation may be given to the Control Room on wireless. I, SI along with colleagues gets busy on the spot for conducting investigation. Sd/- Rajesh Kumar, SI, P.S. Division No.2, Pathankot City, 10.50 AM. Today at Police Station: At present, upon the receipt of above said written message through PHG Sumit Thakur, No. 13110/PTK and after registration of above said FIR under the aforesaid offences, copy of the FIR along with the original written message, was sent by hand through the coming PHG, to the said S.I. who is busy in investigation on the spot. After issuing the special reports, the same are being sent by hand through PHC Harphool Rai, 728/PTK to Hon'ble Illaqa Magistrate Pathankot and to the higher officers. Intimation to the Control Room is being sent through wireless. Report No.17 daetd 13.3.2025 is completed at 11.50 AM.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 03.03.2025. Learned counsel for the

petitioner has further argued that prime allegations against the petitioner are that 10gms of heroine, Rs.2200/- of drug money and one weighing scale have been recovered from him. Learned counsel for the petitioner has further iterated that the contraband alleged to have been recovered from the petitioner is non-commercial in nature and the police has falsely foisted the recovery of Rs.2200/- upon the petitioner as drug money only in order to invoke the rigors of Section 37 of NDPS Act. Thus, regular bail is prayed for.

4. Counsel for the State has opposed the present petition by arguing that the allegations raised are serious in nature and, thus, the petitioner does not deserve the concession of regular bail. Learned State counsel has further submitted that the instant bail plea is barred by the rigors of Section 37 of the NDPS Act, and thus, the same ought to be dismissed. Learned State counsel seeks to place on record custody certificate dated 30.07.2025 in Court, which is taken on record. He has also filed reply by way of affidavit of Shri Daljinder Singh Dhillon, PPS, Senior Superintendent of Police, District Pathankot, which is kept on record. A copy thereof has been furnished to learned counsel for the petitioner.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner is in custody since 03.03.2025. The conclusion of investigation as also trial emanating therefrom, if occasion so arises, will take its own time. It is not in dispute that the contraband recovered from the petitioner is 10gms of heroine, which is non-commercial in nature. Further, the invocation of Section 27A of NDPS Act is on account of

alleged recovery of Rs.2200/- shown to be as drug money, but the basis thereof is confessional statement of the present petitioner. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage lest it may prejudice the rights of either of the parties. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence.

6.1 In the factual milieu of the case, this Court is of the considered opinion that fetters of Section 37 of the NDPS Act have been met with so as to enlarge the petitioner on bail. It would be apposite to refer a judgment of this Court in *Jaswinder Singh alias Kala versus State of Punjab* passed in *CRM-M-33729-2025 (2025:PHHC:089161)*; the relevant whereof reads thus:

“14. As a sequitur to above-said ruminations, the following postulates emerge:

(I) (i) A bail plea on merits; in respect of an FIR under NDPS Act of 1985 involving offence(s) under Section 19 or Section 24 or Section 27-A thereof and for offence(s) involving commercial quantity; is essentially required to meet with the rigour(s) of Section 37 of NDPS Act.

(ii) The rigour(s) of Section 37 of NDPS Act do not apply to a bail plea(s) on medical ground(s), interim bail on account of any exigency including the reason of demise of a close family relative etc.

(iii) The rigour(s) of Section 37 of NDPS Act pale into oblivion when bail is sought for on account of long incarceration in view of Article 21 of the Constitution of India i.e. where the bail-applicant has suffered long under-trial custody, the trial is procrastinating and folly thereof is not attributable to such bail-applicant.

II. The twin conditions contained in Section 37(1)(b) of NDPS Act are in addition to the conditions/parameters

contained in Cr.P.C./BNSS or any other applicable extant law.

III. *The twin conditions contained in Section 37(1)(b) of NDPS Act are cumulative in nature and not alternative i.e. both the conditions are required to be satisfied for a bail-plea to be successful.*

IV. *For consideration by bail Court of the condition stipulated in Section 37(1)(b)(i) of NDPS Act i.e. “there are reasonable grounds for believing that he is not guilty of such offence”:*

(i) The bail Court ought to sift through all relevant material, including case-dairy, exclusively for the limited purpose of adjudicating such bail plea.

(ii) Such consideration, concerning the assessment of guilt or innocence, should not mirror the same degree of scrutiny required for an acquittal of the accused at the final adjudication & culmination of trial.

(iii) Plea(s) of defence by applicant-accused, if any, including material/documents in support thereof, may be looked into by the bail-Court while adjudicating such bail plea.

V. *For consideration of the condition stipulated in Section 37(1)(b)(ii) i.e. ‘he is not likely to commit any offence while on bail’:*

(i) The word ‘likely’ ought to be interpreted as requiring a demonstrable and substantial probability of re-offending by the bail-applicant, rather than a mere theoretical one, as no Court can predict future conduct of the bail-applicant.

(ii) The entire factual matrix of a given case including the antecedents of the bail-applicant, role ascribed to him, and the nature of offence are required to be delved into. However, the involvement of bail-applicant in another NDPS/other offence cannot ipso facto result in the conclusion of his propensity for committing offence in the future.

(iii) The bail-Court may, at the time of granting bail, impose upon the applicant-accused a

condition that he would submit, at such regular time period/interval as may stipulated by the Court granting bail, an affidavit before concerned Special Judge of NDPS Court/Illaq (Jurisdictional) Judicial Magistrate/concerned Police Station, to the effect that he has not been involved in commission of any offence after being released on bail. In the facts of a given case, imposition of such condition may be considered to be sufficient for satisfaction of condition enumerated in Section 37(1)(b)(ii).

VI. There is no gainsaying that the nature, mode and extent of exercise of power by a Court; while satisfying itself regarding the conditions stipulated in Section 37 of NDPS Act; shall depend upon the judicial discretion exercised by such Court in the facts and circumstances of a given case. No exhaustive guidelines can possibly be laid down as to what would constitute parameters for satisfaction of requirement under Section 37 (ibid) as every case has its own unique facts/circumstances. Making such an attempt is nothing but a utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such matter.”

6.2 As per the custody certificate dated 30.07.2025 filed by the learned State counsel, the petitioner has suffered incarceration 4 months and 25 days. Further, as per the said custody certificate the petitioner is stated to be involved in two more criminal case. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon’ble Supreme Court in *Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012 (1) RCR (Criminal) 586*; a Division Bench judgment of the Hon’ble Calcutta High Court in case of *Sridhar Das v. State, 1998 (2) RCR (Criminal) 477* & judgments of this

Court in *CRM-M No.38822-2022* titled as *Akhilesh Singh v. State of Haryana*, decided on 29.11.2021, and *Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191*.

Suffice to say, the further detention of the petitioner in custody is not required in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/Duty Magistrate, the petitioner shall remain bound by the following conditions:

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.
- (viii) The petitioner shall submit, on the first working day of every month, an affidavit, before the concerned trial Court, to the effect that he has not been involved in commission of any offence after being released on bail. In case the petitioner is found to be involved in any offence after his being enlarged on bail in the present FIR, on the basis of his affidavit or otherwise, the State is mandated to move, forthwith, for cancellation of his bail which plea, but of course, shall be ratiocinated upon merits thereof.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

July 31, 2025

Naveen

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No