

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42015-2024
Reserved on: 01.08.2025
Pronounced on: 29.08.2025

Balwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Sekhon, Advocate, for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
93	19.06.2024	STF Mohali	22/29 of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, seeking anticipatory bail.

2. As per paragraph 13 of the bail petition, the petitioner has no criminal antecedents.

3. The facts and allegations are taken from the status report 31.07.2025 filed by the State. On 19.06.2024, based on secret information, the Police seized 1300 tablets of Tramadol Hydrochloride Trekem-100 from co-accused Luckybawa Singh possession. During further investigation of the case, 1,57,000 tablets of NRX make Tramadol Hydrochloride Trekem-100 were also recovered from the co-accused Lucky Bawa Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. During custodial interrogation, the co-accused disclosed that the intoxicant tablets which were recovered has been supplied to him by the petitioner.

4. Vide order dated 29.08.2024, the co-ordinate Bench of this Court had granted interim bail to the petitioner and the said order is continuing till date.

5. The petitioner's counsel submits that the recovery in the present case was effected from co-accused Lucky Bawa Singh on 19.06.2024 and as per the recovery memo dated 19.06.2024, 103 strips each containing 10/10 tablets total 1300 tablets make Trekam-100 bearing batch No.NT-2471 date of Manufacturing June, 2024, date of expiry May, 2026 were recovered. It is pertinent to mention here that the alleged recovery tablets were manufacture in the month of June, 2024 and per affidavit dated 31.07.2025 petitioner exchanged 7 calls from 07.12.2023 to 22.02.2024 (para 13), so the aforesaid calls

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allegedly exchanged between the petitioner and co-accused could not have been in relation to the alleged recovered tablets manufactured in the month of June, 2024, so false implication of the petitioner could not be ruled out.

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 his family.

7. State counsel opposes bail on the ground that the manufacturing date may be fake and even if the manufacturing date is of June, 2024, there is no authenticity that it was actually manufactured on such date and usually the Drug Companies given the manufacturing date of later dates, so that expiry date is also extended. Further, a massive recovery of more than lakh tablets effected from the main accused and there is call details between the petitioner and co-accused using whatsapp numbers and international numbers as mentioned in para 10 of the reply dated 03.02.2025.

REASONING:

8. As per the status report, the name of the contraband is Tramadol, and it obviously falls in commercial quantity, and it constitutes an offense under the following provisions and notifications:

Substance Name	Tramadol
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<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
Notification No. & date	S.O. 1762 (E) dated 26.04.2018
Punishable U/s	S.22(a) of NDPS Act, 1985

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1762(E)	4/26/2018
Sr. No.	238 ZH	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol	
Other non-proprietary name	*****	
Chemical Name	*****	
Small Quantity	< 5 Gram	
Commercial Quantity	> 250 Gram	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985

Notification No. & dated	S.O.1761(E) & S.O. 3448(E)	26-Apr-2018 & 26-Jul-2018
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Sr. No.	110Y
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

9. The initial recovery was of 1300 tablets and the main accused had also led recovery of 1,57,000 tablets. There is call details through whatsapp connecting the petitioner with the main accused and certainly it's not a case of anticipatory bail because custodial interrogation is required to unearth the truth.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. **Petition dismissed.** Interim order dated 29.08.2024 is recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

29.08.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No