

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32633-2025
Reserved on: 09.09.2025
Pronounced on: 22.09.2025

Nitin Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.K. Chauhan, Advocate,
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
170	12.08.2023	Tibba, Distt. Police Commissionerate, Ludhiana	379, 379-B, 411 IPC & 22 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. As per para 9 of the bail petition and as per para 17 E of the status report, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Year	Offenses	Police Station
1.	141	2016	379 IPC	Baldev Nagar, Ambala, Haryana
2.	157	2016	379 (b) IPC	Sadar Ambala, Haryana
3.	227	2016	379 (a) IPC	Cantt City, Ambala, Haryana
4.	302	2016	379 (a) IPC	Baldev Nagar, Ambala, Haryana
5.	319	2016	379 (a) IPC	Ambala Cantt. Ambala, Haryana
6.	330	2016	379 (a) IPC	Baldev Nagar, Ambala, Haryana
7.	653	2016	379 (a) IPC	Baldev Nagar, Ambala
8.	61	2017	379 (a) IPC	Sadar Yamuna Nagar, Haryana
9.	247	2018	379 (a) IPC	Civil Lines, Karnal
10.	421	2017	379 (a) IPC	Sadora, Yamuna Nagar, Haryana
11.	446	2017	379 (a) IPC	City Kurukshetra, Haryana
12.	463	2017	379 (a) IPC	Thanesar, Kurukshetra, Haryana
13.	527	2017	379 (a) IPC	Karnal, Haryana
14.	549	2017	379 (a) IPC	City Karnal, Haryana
15.	550	2017	379 (a) IPC	City Karnal, Haryana
16.	642	2017	392, 411 IPC	Kotwali Shamili, Uttar Pradesh

3. The facts and allegations are taken from para 3 of the reply filed by the State, which reads as follows:

“3. That it is respectfully submitted that on receipt of order dated 18.08.2025 passed by this Hon'ble Court, the deponent has perused the record of the case with the assistance of SHO Police Station Tibba, District Police Commissionerate, Ludhiana. After perusal of record, it is revealed that on 12.08.2023, ASI Raj Kumar along with other police officials was on patrol duty in a government vehicle bearing registration No.PB10BX-0161, for the purpose of checking suspected persons and vehicles. When the police party reached Mohalla Baba Namdev Colony, Tibba Road, Ludhiana, a secret informer approached and disclosed that Nitin Kumar and Sumer were involved in motorcycle thefts, gold chain snatchings, and also in the sale of intoxicant tablets. It was further informed that both were presently standing outside their house in the street and intended to use a stolen motorcycle, bearing registration No.PB10CV-8404 (black colour Pulsar), for selling intoxicating tablets. The informer stated that if a raid was conducted immediately, the accused could be apprehended along with a large quantity of intoxicating tablets and other stolen or snatched articles.”

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and the CrPC, 1973.

5. The petitioner's counsel refers to the bail petition. It would be relevant to refer to paras 9 & 13, which reads as follows:

“9. That local police has involved the petitioner in three false cases of theft in the same day i.e. 12.8.2023 i.e. i) FIR No.137 dated 12.8.2023, U/s 379-B IPC, P.S. Dugri Distt. Ludhiana, ii) FIR No.156 dated 12.8.2023, U/s 379-B IPC P.S. Haibowal, Distt. Ludhiana, iii) FIR No.170 dated 12.08.2023, U/s 379, 379-B, 411 of IPC, u/s 22 of NDPS Act, P.S. Tibba, District Ludhiana. This shows that petitioner has been falsely implicated in the false cases.

13. That co-accused of the petitioner namely Sumer @ Sumail has been granted regular bail by this Hon'ble Court in CRM-M 59665 of 2024 vide order dated 14.02.2025. Copy of order dated 14.2.2025 is annexed herewith as Annexure P-2.”

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. The State's counsel opposes bail and refers to the reply.

REASONING:

8. As per paragraph 15 of the reply, the name of the contraband is Alprazolam, and its weight is 170 grams.

9. Dealing in 170 grams of Alprazolam in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	ALPRAZOLAM
Quantity detained	170 Gram

CRM-M-32633-2025

Punishable U/s	S.22(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	170.00%

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.	178	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	ALPRAZOLAM	
Other non-proprietary name	*****	
Chemical Name	8-chloro-1-methyl-6-phenyl-4H-s-triazolo[4,3-a][1,4]benzodiazepine	
Small Quantity	< 5 Gram	
Commercial Quantity	> 100 Gram	

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Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	NDPS Act, 1985 (61 of 1985), S.O. 821(E)	11/14/1985

Sr. No.	30	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	ALPRAZOLAM	
Other non-proprietary name	*****	
Chemical Name	8-Chloro-1-methyl-6-phenyl-4H-s-triazolo [4, 3-a] [1, 4] benzodiazepine	

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. 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.

12. The State's Counsel argues that 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.

13. 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

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.

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.

14. The petitioner’s arguments did not point toward any material contradictions.

15. The submissions made above and 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. 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.

17. 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.

18. 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.

19. The note on the petitioner's custody certificate dated 08-09-2025 reads as follows:

"Note:- It is submitted that as per Hon'ble Punjab and Haryana High Court, Chandigarh judgment/order dated 17.03.2016 passed by the Hon'ble Mr. Justice Ajay Tewari in CRM-M-21934 of 2015, the under trial period from 15.08.2023 to till date has not been set off in the above mentioned case because he is undergoing his actual sentence in case FIR No.414/2017, P.S. Civil Lines, Karnal."

CRM-M-32633-2025

20. In the entirety of facts and the petitioner's custody, as an exceptional case, this Court is requesting the Ld. Trial Court to expedite the trial. If the co-accused, who is on bail, delays the trial, steps be taken to cancel his bail. Efforts be made to conclude the trial by 15 December 2025. Petitioner, State and the Registry to inform the concerned Court.

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, stand disposed of.

(ANOOP CHITKARA)
JUDGE

22.09.2025

Jyoti-II

Whether speaking/reasoned: Yes

Whether reportable: No.