



CRM-M-27209-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27209-2025
Reserved on: 02.07.2025
Pronounced on: 31.07.2025

Agyapal Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vipul Jindal, Advocate
for the petitioner.

Ms. Pooja Nayar Sharma, D.A.G., Punjab.

ANOOP CHITKARA, J.

| FIR No. | Dated | Police Station | Sections |
|---------|------------|--|-----------------------|
| 58 | 12.08.2024 | Sarai Amant Khan, District Tarn Taran | 21(c), 29 of NDPS Act |

1. The petitioner apprehending arrest in the FIR captioned above had come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. Per paragraph 5 of the bail petition, petitioner has no criminal antecedents.
3. The facts and allegations are taken from the short reply filed by the State. On 12.08.2024, based on a chance recovery, the Police seized 549 grams of Heroin from the possession of co-accused. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. During the custodial interrogation, the co-accused named the petitioner, and based on this confession, the investigator arraigned him as an accused. The petitioner approached the Sessions Court for anticipatory bail, which was surprisingly denied.
5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.
6. The petitioner's counsel submits that the petitioner would have no objection whatsoever to any stringent conditions that this Court may impose, including that if the



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petitioner repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, or commits any offence under the NDPS Act, where the quantity involved is more than half of the intermediate, or commercial quantity, or violates S. 19, or 24, or 27-A of the NDPS Act, the State may file an application to revoke this bail before the concerned Special Judge or Sessions Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and may do so at their discretion, to which the petitioner shall have no objection.

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

8. It would be appropriate to refer to the following portion of short reply, which read as follows:

“EVIDENCE AGAINST THE PETITIONER:

10. That it is submitted that commercial quantity of heroin i.e. 549 grams of heroin has been recovered in the present case and the FSL report has also been received in the present case. Moreover, the co-accused has suffered his Disclosure Statement before the Investigating Officer in which he has stated that he is indulged in smuggling of heroin in connivance with the petitioner. As such, there is ample evidence on record against the petitioner.”

9. Since the evidence against the petitioner is only of disclosure statement but this Court has dismissed the petition of co-accused Amritpal Singh @ Amrit by judicial precedent coupled with the massive quantity involved and smuggling of Heroin from drones from a hostile neighbourhood Pakistan. Further, to find out the nexus of petitioner with other smugglers, his custodial interrogation is necessary and as such petitioner is not entitled to bail.

10. In State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991, wherein the Hon'ble Supreme Court holds,

[8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

[9]. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

11. The quantity of heroin that was seized falls in the commercial category. Section 37¹

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—



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of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences 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 offence and is not likely to commit any offence 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 offence 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 expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial

(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.



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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. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.

14. The quantity involved is commercial, and the burden to satisfy the rigor of condition of Section 37 of the NDPS Act was on the petitioner, which he did not discharge to the satisfaction of the statutory requirements. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for anticipatory bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

15. The learned Special Judge, while dismissing the anticipatory bail of the petitioner, has given elaborative reasons and considered almost every aspect.

16. 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.

17. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union of India v. Padam Narain Aggarwal* (2008) 13 SCC 305].

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



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20. **Petition dismissed.** Liberty reserved to the petitioner to file an application for regular bail before the Sessions Court and the concerned Court is requested to decide the bail application as early as possible preferably within one week. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

31.07.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.