

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13304-2025
Reserved on: 09.07.2025
Pronounced on: 31.07.2025

Kulwant Singh @ Kanta

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. N.S.Sodhi, Advocate and
Mr. Monty Goyal, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0026	05.08.2023	SSOC Fazilka, District Fazilka	21-C, 29, 25, 27 of NDPS Act and 25 of Arms 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 17 of the bail petition, petitioner has no criminal antecedents.
3. The facts and allegations are taken from the status report filed by the State, which read as follows:-

“7. That brief facts of the case are that on 05.08.2023 Inspector Baldev Singh, No 5090/INT along with other police officials was present at his office of Counter Intelligence Unit Ferozpur and during that period, he received a secret information that Gagga Gill @ Gagan @ Kali and Veer Singh @ Veeru are habitual of smuggling Heroin. It was further informed that they are having contact with Pakistani smugglers and they used to make internet call to them through mobile phone and thereafter, they smuggle Heroin in Indian territory from Pakistan and further supply the same in various States. It was further informed that recently they had smuggled a huge quantity of Heroin from Pakistan and accused Gagga Gill alias Gagan Kali and Veer Singh @ Veeru were transporting the same on motorcycle Super Splendor, without bearing registration number, black in colour and are coming from the side of village Bare Ke, border road towards Kille Wala Chowk, Ferozpur. It was further informed that if immediately raid is conducted, they could be apprehended along with heavy quantity of

Heroin. Finding the information to be trustworthy, Ruqa was prepared, on the basis of which, present FIR was registered.

8. That thereafter, raid was conducted at the place disclosed in the secret information. After sometime, Gagga Gill alias Gagan Kali and Veer Singh @ Veeru were apprehended coming on motor cycle loaded with bag and after following due procedure, their search was conducted. From their search, 40 polythene bags were recovered, out of which 39 packets were found containing heroin and one was of weapon and accordingly 41 Kgs 800 grams of Heroin, 2 Pistols 9mm along with 4 magazine and 100 live cartridges 9 mm, one Pistol 30 Bore along with two magazines and 15 live cartridges of 30 Bore were recovered, which were taken into police possession.

9. That during interrogation, the above said accused made disclosure statement that Charanjit Singh @ Channu along with Kulwant Singh @ Kanta (petitioner) are having relations with a Pakistani smuggler namely Dogar, resident of Lahore. It was further disclosed that Kulwant Singh alias Kanta along with other accused communicate with above said smuggler through mobile phone by using different applications and thereafter, smuggled Heroin and weapons into the Indian territory and after arranging carriers, they further supply the same On the basis of above said information, vide DDR No.25 dated 09.08.2023, Kulwant Singh (petitioner) was nominated in this case. Kulwant Singh was arrested in this case on 11.08.2023. During his personal search, one mobile phone make Samsung colour black, capacity of two sim cards was recovered, but no sim card was found present in the mobile phone. The said mobile phone was taken into possession by the police. The said mobile phone was sent to FSL Lab for analysis and as per the report dated 24.01.2024 issued by Incharge, Digital Cyber Forensic Lab, one virtual/temporary WhatsApp number +15753000678 was found in the said mobile phone.

10. That on 14.08 2023, Gagga Gill alias Gagan again suffered disclosure statement that his brother Vikram alias Vickey son of Tek Chand and Balwinder Singh allas Vindi are having links with the Pakistani Smuggler namely Dogar of Lahore and his brother Vikram and Balwinder Singh alias Vindi after having conversation with Doggar received consignment of heroin in the year 2022 and the same was recovered by the police and case was registered against them. He further confessed that now Vikram and Balwinder Singh arranged talk with Dogar of Lahore and he (Gagga Gill) received the heroin, which has now been recovered in this Thus vide rapat no 14 dated 14.08.2023, Vikram Singh alias Vickey and Balwinder Singh alias Vindi were nominated as accused on the disclosure statement of Gagga Gill. Vikram Singh alias Vickey and Balwinder Singh alias Bindiwere already confined in Central Jail Ferozepur and they were arrested through production warrants in the present case.

11. That Balwinder Singh alias Bindi was arrested on 19.08.2023 through production warrants.

12. That during police remand, Balwinder Singh alias Bindi suffered disclosure statement that he along with his companions Vikram alias Vickey, Ravinder alias Gulli, Gagga Gill alias Gagan alias Kali sons of Tek Chand indulged in smuggling of heroin and he further admitted that they have links with Pakistani Smuggler Dogar. He further confessed that on earlier five occasions also, he along

with Vikram alias Vickey, Ravinder alias Gulli, Gagga Gill received heroin from Pakistani Smuggler Dogar through Veer Singh alias Veeru son of Resham Singh, r/o village MuharSona, PS: SadarFazilka and Jagdeep Singh alias Bhuchhar son of Raja Singh, r/o Near Dana Mandi, village Deep Singh Wala, District Faridkot through Satluj river. He further admitted that on the directions of SmugglerDogar, the said heroin was further supplied to the Indian Smugglers and the accounts of money were maintained by Ravinder alias Gulli. Thus Ravinder Singh alias Gulli son of Tek Chand was nominated in this case vide GD no.21 dated 22.08.2023 on the basis of the disclosure statement of Balwinder Singh alias Bindi accused.”

4. 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.

5. The State's counsel opposes bail and refers to the status report.

6. It should be appropriate to refer to the following portions of status report, which read as follows:-

“3. That the petitioner filed third petition for bail as first bail application was dismissed as withdrawn and second application was decided on merits on 14-08-2024. Therefore, there are not sufficient fresh grounds for filing the present petition and as such present petition is liable to be dismissed. The challan has been filed against the petitioner and other non-petitioners on 24-01-2024 and now fixed for 16-04-2025 for prosecution evidence pending in the court of Sh Japinder Singh, Additional Session Judge, Fazilka.

4. That in compliance of order dated 02-04-2025 of the Hon'ble court, report regarding queries of A, B, C, D & E is as under:

A. The name and total weight of the drug is as under:

Name of drug Heroin

Weight of drug-41 Kgs 800 grams (Commercial Quantity)

(Recovery of drug and weapons is mentioned in Para No 7 of the reply)

B. The evidence based on which the petitioner was arraigned as an accused as under:

On 08.08.2023, co-accused Gagga Gill alias Gagan alias Kali and Veer Singh suffered disclosure statement that Charanjit Singh @Channu along with Kulwant Singh @Kanta (present petitioner) are having relations with a Pakistani smuggler namely Dogar, resident of Lahore. It was further disclosed that Kulwant Singh alias Kanta (present petitioner) along with other accused communicate with above said smuggler through mobile phone by using different applications and thereafter, smuggled Heroin and weapons into the Indian territory and after arranging carriers, they further supply the same. On the basis of above said information, vide DDR No.25 dated 09.08.2023, Kulwant Singh (present petitioner) was nominated in this case.

C. Evidence against petitioner:

During investigation following evidence has been collected by the I.O. against the accused:

i. Disclosure statement dated 08-08-2023 of co-accused

Gagga Gill @Gagan @ Kali.

ii. Disclosure statement dated 08-08-2023 of co-accused Veer Singh.

iii. Statement of S.I. Jatinderjit Singh No. 7/1527 under section 161 CrPC.

iv. Statement of ASI Sukhjinder Singh under section 161 CrPC.

v. Above said recovery memos etc from Gagga Gill and Veer Singh.

Both co-accused Gagga Gill and Veer Singh in their disclosure statements that Charanjit Singh @ Channu along with Kulwant Singh @ Kanta (present petitioner) are having relations with a Pakistani smuggler namely Dogar, resident of Lahore. It was further disclosed that Kulwant Singh alias Kanta (present petitioner) along with other accused communicate with above said smuggler through mobile phone by using different applications and thereafter, smuggled Heroin and weapons into the Indian territory and after arranging carriers, they further supply the same. On the basis of above said information, vide DDR No.25 dated 09.08.2023, Kulwant Singh @Kanta (present petitioner) was nominated in this case. Kulwant Singh @Kanta (petitioner) was arrested in this case on 11.08.2023. During his personal search, one mobile phone make Samsung colour black, capacity of two sim cards was recovered, but no sim card was found present in the mobile phone. The said mobile phone was taken into possession by the police. The said mobile phone was sent to FSL Lab for analysis and as per the report dated 24.01.2024 issued by Incharge, Digital Cyber Forensic Lab, one virtual/temporary WhatsApp number +15753000678 was found in the said mobile phone.

D. Role of petitioner:

That co-accused Gagga Gill alias Gagan alias Kali and Veer Singh along with Kulwant Singh @ Kanta (present petitioner) indulge in smuggling of heroin as they are having connection with heroin smuggler Dogar resident of Lahore, Pakistan and the petitioner was the link for smuggling of narcotics and weapons in the Indian territories after arranging carriers for smuggling.

E. Petitioner Criminal antecedents

That except the present FIR, no other case was found to be registered against the petitioner as per police record.”

7. Dealing with 41.8 Kg of heroin is an offence under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	41.8 Kg
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	16720.00%

<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
<i>Notification No. & date</i>	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>		
<i>Notification No. & dated</i>	S.O.1055(E)	10/19/2001
<i>Sr. No.</i>	56	
<i>Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN))</i>	Heroin	
<i>Other non-proprietary name</i>	*****	
<i>Chemical Name</i>	Diacetylmorphine	
<i>Small Quantity</i>	5 Gram (i.e. equivalent to 0.005 Kg)	
<i>Commercial Quantity</i>	250 Gram (i.e. equivalent to 0.25 Kg)	

<i>Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985</i>		
<i>Notification No. & dated</i>	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)	11/14/1985
<i>Sr. No.</i>	2(xvi)(d)	
<i>Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN))</i>	*****	
<i>Other non-proprietary name</i>	*****	
<i>Chemical Name</i>	<p>2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts;</p> <p>Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage:</p> <p>Provided that the Central Government may, having</p>	

	<p>regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.</p>
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8. 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.

9. 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.

10. 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.

11. 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

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.

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.

12. After the petitioner was arrested from his personal search, police had recovered mobile phone made Samsung with two sims capacity ports. The Digital Cyber Forensic lab found a virtual WhatsApp number from the said mobile. This clearly points out towards the petitioner’s using dark web technologies to conceal evidence and points out towards his involvement with Pakistani smugglers. The quantity involved is massive and if this court grants bail even on custody in such a massive recovery, then it most likely put the sovereignty and integrity of the country into parallel. Although normally it is not for this Court to interfere in the docket of the trial Courts but this is a rare case where considering the quantity of heroin being 41.88 kgs and the smuggling from a hostile country, it is a fit case where the trial must be expedited and concluded on topmost priority. Registry to send a copy of this order to the trial Court. If any of the accused is on bail and they take a single adjournment, their bail may be cancelled in accordance with law. Petitioner is not entitled to bail on parity with co-accused who was granted bail in CRM-M No.7152 of 2025 because evidence against him is of disclosure and his custody was 01 year, 08 months. It is for the reason that petitioner has more evidence against him which is in the shape of recovery of mobile phone which has virtual number which points out towards petitioner using dark web technology to encourage smuggling in Pakistan smugglers.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. The petitioner’s custody of around two years cannot be termed prolonged, given the minimum sentence prescribed for the offense, which is 10 years.

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.

20. **Petition dismissed.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

31.07.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.