

CRM-M-5003-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5003-2025

Reserved on: 05.08.2025

Pronounced on: 27.08.2025

Gurpreet Singh ...Petitioner

Versus

State of Punjab ...Respondent

CRM-M-30865-2025

Gurjit Singh @ Geetu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhinav Gupta, Advocate and
Mr. Jatinder Kumar Kansal, Advocate
for the petitioner (s) in CRM-M-5003-2025.

Mr. Arnav Ghai, Advocate
for the petitioner(s) in CRM-M-30865-2025.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
06	10.01.2024	Khalra, District Tarn Taran	21(c)/29/61/85 of NDPS Act

1. This order shall dispose of two petitions as mentioned above. For the sake of brevity, facts have been taken from ***CRM-M-5003-2025 titled as Gurpreet Singh vs. State of Punjab.***

2. The petitioner(s) 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.

3. Per paragraph 13 of the bail petition (CRM-M-5003-2025) as well as status report and custody certificate dated 04.08.2025, the petitioner-Gurpreet Singh has the following criminal antecedents:

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Sr. No.	FIR No.	Date	Offenses	Police Station
1	173	11.10.2020	302, 120B, 506, 148, 149 IPC and 25/27/54/59 of Arms Act	Bhikhiwind
2	15	04.09.2023	25, 54, 59 of Arms Act and 120B IPC	SAS Nagar Mohali
3	132	28.04.2021	42/52-A of Prisons Act	Islamabad

Per para 21 of the bail petition (CRM-M-30865-2025), petitioner declares that he has no criminal history, however per para 13(E) of the status report as well as custody certificate dated 04.08.2025, petitioner-Gurjit Singh has the following criminal antecedents:-

Sr. No.	FIR No.	Date	Offenses	Police Station
1	347	23.12.2020	336, 148, 149 IPC and 25/27/54/59 of Arms Act	Goindwal Sahib

4. The facts and allegations are taken from the reply filed by the State. On 10.01.2024 based on a chance recovery, the Police seized 508 grams of heroin from Gurjit Singh (petitioner in CRM-M-30865-2025) and 957 grams of heroin from co-accused/Sukhwinder Singh @ Gora. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. During the investigation, petitioner-Gurpreet Singh was found involved in the offence based on the call details as he provides mobile phone to co-accused.

5. The petitioners' counsel pray for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioners and their family.

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

REASONING:

7. As per paragraph 4 of the reply, the name of the contraband is heroin and its weight is 1465 grams in total and recovery from petitioner Gurjit Singh of 957 grams, and it constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	957 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	382.80%

<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and

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	Commercial)
Punishable U/s	S.22(c) of NDPS Act, 1985

<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.	56	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin	
Other non-proprietary name	*****	
Chemical Name	Diacetylmorphine	
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.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)	11/14/1985

Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; 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

	<p>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 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 petitioners must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

9. Perusal of the status report filed in both the petitions reflects that petitioners are in contact with the Pakistani handlers/smugglers and they used to collect narcotics substance from the Pakistani smugglers and used to spread the same in the State of Punjab and adjoining area, as such, conduct of the petitioners is heinous and moreover, the petitioners have criminal antecedents, as such, they are not entitled for bail on the custody of 01 year and 06 months.

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 petitioners are not guilty of the offense. The burden of proof is also on the petitioners 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

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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. The petitioners’ arguments did not point toward any material contradictions.

13. 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 petitioners have 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 petitioners with the crime; thus, the petitioners fail to make out a case for bail. Any detailed discussions about the evidence may prejudice the case of the petitioners, the State, or the other accused.

14. 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

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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.

15. 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.

16. A perusal of the bail petition and the documents attached prima facie points towards the petitioners' 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

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petitioners; this court refrains from doing so.

17. The petitioners' custody of more than one year cannot be termed prolonged, given the minimum sentence prescribed for the offense.

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

19. Petitions dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

27.08.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.