

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARHCRM-M-5274-2025 (O&M)  
Reserved on: 05.05.2025  
Pronounced on: 19.05.2025

ARSHDEEP SINGH @ ARSH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Riffi Birla, Advocate for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
82	23.07.2024	Khuian Sarwar, District Fazilka	21/29/61/85 of NDPS Act, 1985

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. In paragraph 16 of the bail petition and 6 of the reply, the petitioner has no criminal antecedents

3. Facts of the case are taken from reply dated 25.02.2025. On 23.07.2024 based on secret information, police seized 525 grams heroin from the possession of the co-accused Dimple Kumar and Sukhbir Singh. During the interrogation, they disclosed name of the petitioner as seller of drug. Based on the said statement, petitioner is arraigned as accused in this case.

4. On 04.02.2025, this Court had asked the State to file response, which was duly filed. After considering the reply dated 25.02.2025 filed by the concerned DySP, this Court had granted interim bail to the petitioner and had directed the investigator to conduct further investigation qua averments made in paragraphs No.6 and 11 of the bail petition, which reads as follows:

*“6. That petitioner has been falsely implicated in the present case and is having no concern with alleged recovery which was planted by co-accused Dimple and Sukhbir upon the petitioner as petitioner is known to them being residents of same village and friends.*

11. That it is pertinent to mention here that though there are call details between petitioner and the co-accused from the prosecution case but there is no transcript of call details between petitioner and co-accused and in absence of possession of contraband, call details cannot be treated to be sufficient material to establish live link between petitioner and co-accused.”

4. After that State had filed another reply dated 28.04.2025, paragraph Nos.10 and 11 thereof read as follows:

“10. That during the course of investigation, Call Detail Record of mobile phone numbers of accused Sukhbir Singh, Dimple Kumar, Arshdeep Singh @ Arsh and Gurbalraj Singh were collected and the following observation has been made out:-

*Call Detailed Record Summery Chart Dated 01.07.2024 to 23.07.2024*

<i>Name of accused</i>	<i>Mobile Number</i>	<i>Total Call</i>	<i>Call In</i>	<i>Call Out</i>	
<i>Sukhbir Singh XXX3012375</i>	<i>Dimple Kumar XXX0679245</i>	76	40	28	08
	<i>Arshdeep Singh XXX1242924</i>	43	23	20	00
	<i>Gurbalraj Singh XXX8936231</i>	22	03	10	09
<i>Dimple Kumar XXX0679245</i>	<i>Arshdeep Singh XXX1242924</i>	131	55	52	24
	<i>Gurbalraj Singh XXX8936231</i>	79	38	24	17
	<i>Sukhbir Singh XXX3012375</i>	76	28	41	07
<i>Arshdeep Singh XXX1242924</i>	<i>Dimple Kumar XXX0679245</i>	131	52	55	24
	<i>Gurbalraj Singh XXX8936231</i>	70	39	31	00
	<i>Sukhbir Singh XXX3012375</i>	43	20	23	00
<i>Gurbalraj Singh XXX8936231</i>	<i>Dimple Kumar XXX0679245</i>	80	24	38	13
	<i>Arshdeep Singh XXX1242924</i>	64	27	34	03
	<i>Sukhbir Singh XXX3012375</i>	22	03	10	09
<i>Total</i>		837	352	366	119

From the call detail record of the mobile phone numbers of above said accused, it has been established that the above named accused were in connection with each other for the trafficking of Heroin.

11. That a sample parcel of the Heroin was deposited in the office of RTFSL, Bathinda through Senior Constable Mandeep Singh no.231/FZK on 24.07.2024 in intact condition and as per the report no.1402/2024/Toxi dated

*21.08.2024, Diacetylmorphine (Heroin) has been found present in the content of the sample parcel.*

5. The petitioner seeks bail on the ground of parity with the co-accused, namely, Husandeep Singh @ Hushandeep, who was granted bail by this Court on 11.03.2025 in CRM-M-790-2025. The reason for granting bail to Husandeep Singh @ Hushandeep was mentioned in paragraph 12 of the said order, which reads as follows:

*“The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of the co-accused. No other evidence is collected at this stage to connect the petitioner with the main accused. Thus, there is no justification to deny bail. Consequently, the petitioner has satisfied the first rider of section 37 of the NDPS Act. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.”*

6. At that time, there were no direction to collect call details, even further a reference to the call details as mentioned in para 10 of the reply dated 28.04.2025 does not mention any call details between the main accused and Husandeep Singh @ Hushandeep. As such, petitioner is not entitled to bail on party with the co-accused, Husandeep Singh @ Hushandeep.

7. Initially, the counsel for the petitioner further seeks bail on the ground that during the interim bail, petitioner did not misuse his liberty. Counsel for State submits that the petitioner was granted interim bail based on the evidence, which was mentioned in the reply dated 25.02.2025 and after that, this Court had directed further investigation, which was conducted and now, ample evidence has come in the shape of call details connecting petitioner-Arshdeep Singh @ Arsh and the other accused. Counsel for the State submits that there are call details between Sukhbir Singh, Dimple Kumar, Arshdeep Singh @ Arsh and Gurbalraj Singh *inter se*, which clearly connects that they were involved.

REASONING:

8. Analysis of the arguments and the reply dated 28.04.2025 and the evidence collected after further investigation would lead to the final outcome. There are call details connecting accused Sukhbir Singh, Dimple Kumar (main accused), petitioner-Arshdeep Singh @ Arsh and Gurbalraj Singh. Petitioner's counsel did not give any explanation about such calls. In this case, the police had recovered 525 grams of heroin from a car, the driver of the car revealed his name Sukhbir Singh and other passenger Dimple Kumar. This Court is not referring to any evidence, which has come in the shape of disclosure statement but this Court is referring to the evidence, which has come in the shape of call details. There are multiple numbers of calls between these accused as referred to in para 10 of the reply dated 28.04.2025.

9. 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.

10. The petitioner's counsel argued that the call details cannot be relied upon at the bail stage, and if the said evidence is ignored, then there is only the inadmissible evidence of the disclosure statement.

11. In *State Vs. Pallulabid Ahmad Arimutta and Ors.*, 2022 INSC 26 [MANU/SC/0053/2022], a three-member bench of Hon'ble Supre Court holds as follows:

[10]It has been held in clear terms in *Tofan Singh v. State of Tamil Nadu* MANU/SC/0797/2020 : (2021) 4 SCC 1, that a confessional statement recorded Under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the Petitioner- NCB, on the basis of the confession/voluntary statements of the Respondents or the co-Accused Under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the Accused or the allegations of tampering of evidence on the part of one of the Respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (CrI.) No@ Diary No. 22702/2020, SLP (CrI.) No. 1454/2021, SLP (CrI.) No. 1465/2021, SLP (CrI.) No. 1773-74/2021 and SLP (CrI.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the Petitioner-NCB seeking cancellation of bail granted to the respective Respondents, are dismissed as meritless.

12. A perusal of the above mentioned order points out that while dealing with a challenge to bail, the Hon'ble Supreme Court did not consider the call details as evidence to cancel the bail. However, no specific directions were issued to Courts subordinate to the Hon'ble Supreme Court to ignore call details as evidence while considering bails.

13. Section 37<sup>1</sup> 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

<sup>1</sup>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.

only after recording reasonable satisfaction of its rigors.

14. 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.

15. 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 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.

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. 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.

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 not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

18. 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.

19. 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.

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

21. Petition stands dismissed. Interim order dated 03.03.2025 whereby interim bail was granted to petitioner and any further order of extension of order dated 03.03.2025 stands recalled. Bail bond and surety bonds, if any, furnished pursuant to that order stand cancelled and are discharged. Petitioner is directed to surrender on or before 31.05.2025; in case of failure, trial Court is directed to proceed in accordance with law. All pending application(s), if any, stand disposed of.

**(ANOOP CHITKARA)**  
**JUDGE**

**19.05. 2025**

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Whether speaking/reasoned: Yes

Whether reportable: No.