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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on: 07.07.2025

Akhil Sharma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gursharan Singh, Advocate
for the petitioner.

Mr. J.S. Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
51	18.09.2024	Narot Jaimal Singh, District Pathankot	3, 4 of Official Secrets Act, 10, 11, 12 of Aircraft Act, 21-27A-61-85 of NDPS Act and 303(2), 317(2), 345(3), 238 BNS

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 para 17 of the bail petition, accused declares the following criminal history.

Sr. No.	FIR No.	Date	Offenses	Police Station
1	50	15.09.2024	303(2), 317(2), 345(3), 238 of BNS	Narot Jaimal Singh, Pathankot

3. The facts and allegations are taken from the reply dated 05.07.2025 filed by the State, which reads as follows:-

“That initially the petitioner Akhil Sharma @ Babla was arrested in FIR No. 50 dated 15.09.2024 under section 303(2), 317(2), 345(3), 238 of BNS 2023 registered by the Police Station Narot Jaimal Singh District Pathankot. During his custodial interrogation on 18.09.2024, he had made a disclosure statement that co-accused namely Sukhdeep Singh @Ghudda R/o Village Radiana, Police Station Kalanaur, District Gurdaspur (Punjab) is his friend and about 5-6 months back, Sukhdeep

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Singh @Ghudda had through internet calling contacted him and asked him to send a letter (over here letter means 'Location'). Then Sukhdeep Singh @Ghudda further said him (Akhil Sharma @Babla) that he will send Heroin Packets from Pakistan to the place/location which he will send him through Mobile and his boys will collect Heroin from him. About Three months back, he had smuggled Heroin on three locations sent by Sukhdeep Singh @Ghudda and 4th time due to high electric towers, the signal of Drones failed because of which delivery remained unsuccessful. The Heroin Packets were collected by Harjeet Singh @Jeeta S/o Gurmej Singh along with one unidentified person and who used to tears the packets from one side in which there was Heroin and he had no information/ knowledge about the contents of second packet. They used to send the amount/ drug money in the account of Gaurav Sharma @Gopi R/o Pansar, Police Station Rajbagh, District Kathua (J&K) and he used to collect the amount as per his needs. About 14-15 days back, Balwinder Singh @Bhinda R/o Magarmudian, District Gurdaspur and Cheena R/o Taran Tarn, who were friends of Sukhdeep Singh @Ghudda came to him and took him to Village Bhagwal and they sent location to Sukhdeep Singh @Ghudda. Then about 11:00 pm (in night) on the said day, all three of them i.e. Petitioner & two others went to place of location where Drone arrived from Pakistan side, but due to dense cover of trees, the signal of Drone break down and the Drone returned back without dropping Heroin. That 6th time when Sukhdeep Singh @Ghudda sent the location of cremation ground of his village and asked him to provide some amount of Heroin to him (petitioner). Firstly Sukhdeep Singh @Ghudda refused but lateron agreed to provide him some heroin out of the said consignment. Then 9-10 days prior, Sukhdeep Singh @Ghudda sent location of Cremation Ground adjoining to his village, then about 02:00 am (in night) the consignment of Heroin dropped by a Drone arrived from the Pakistan side, which were collected by two boys sent by Sukhdeep Singh @Ghudda, who came there on Splendor Motorcycle. The said 2 persons gave some Heroin to him (petitioner) and they went back on their motor cycle with the said Heroin. That petitioner Akhil Sharma @ Babla further disclosed that he had kept the Heroin in his fields. That on 18.09.2024, the said Heroin was recovered from the fields of Akhil Sharma @ Babla. Thereafter the present FIR No. 51 dated 18.09.2024 under section 3,4 of official secrets Act 1923, 10, 11,12 of Aircraft Act 1934, 21, 27-A of NDPS Act & 303(2), 317(2) of BNS was registered by the Police Station Narot Jaimal Singh against (i) Balwinder Singh @Bhinda, (ii) Akhil Sharma @

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Babla (petitioner), (iii) Sukhdeep Singh @Ghudda, (iv) Harjeet Singh @Jeeta, (v) Gaurav Sharma @Gopi & (vi) Harchand Singh @Cheena. Vide Rapat No. 30 dated 20.09.2024, Lovepreet Singh @ Lovely & Sahil Saini were also nominated as co-accused in the present FIR. ”

on 21 of NDPS Act has been deleted vide Rapat No. 16 dated 13.03.2025

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

5. Petitioner’s counsel submits that petitioner has no connection with the Pakistani smugglers. He further 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.

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

7. It would be appropriate to refer to following portion of the reply, which reads as follows:

“D. The role of the petitioner :-

That as per the investigation till date, the petitioner is found to be the member of Drug Nexus who smuggled the Heroin from the Pakistan by using Drones and their links are connected with District Gurdaspur, Batala, Amritsar, Taran Tarn, Jammu & Kashmir etc. Further the raids are being conducted to arrest remaining accused persons in the present FIR in order to enquire about their Role.”

REASONING

8. This is a case of transborder narcotic smuggling of heroin through Pakistan border. Concerning the very sensitive nature of relationship with our hostile neighbour, the people who deal smuggling from transborder not only violate narcotics Act but ethically, morally they are also acting against the country. This Court cannot look aside of the ground reality that it is extremely difficult for the law, enforcement agencies to detect the drug smuggling from the border. Considering the massive land tracks which are cultivated by the villagers of both sides are not connected by the road sides and are extremely difficult to inspect further. It is very difficult for the investigator to get to know the location which usually the Pakistan smugglers share with Indian country parts about the dropping of heroin by drone and after taking possession, such messages are deleted from those social media apps. In the present case the heroin was smuggled from Pakistan and petitioner and co-accused were found in its possession. Thus the offence is not only based on the other evidence which

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would be digital in nature but of direct possession. Petitioner is in custody for around 10 months, but considering the massive quantity of heroin, petitioner is not entitled to bail. Considering that delay may be a ground for an accused to claim bail, the trial Courts are requested to expedite the cases of smuggling of heroin from Pakistan border and the present is one such case.

9. Quantity involved is commercial and the drug is heroin which cannot be compared with other medicinal drugs, cough syrups, poppy straw, Ganja and charas etc.

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.

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.

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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 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 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. Per paragraph 9 of the petition, petitioner is in custody from the date of FIR i.e.18.09.2024 and accordingly his custody in this FIR is approximately 10 months which cannot be considered prolonged.

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

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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

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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 petitioner's custody of around 10 months cannot be termed prolonged, given the minimum sentence prescribed for the offense.

20. Regarding the delay in the trial, if the trial does not conclude within one year of the petitioner's custody, and the delay is not attributable to the petitioner, the petitioner may apply for bail before the trial Court. The Court shall not be influenced by the dismissal of bail on merits or by the criminal history and shall decide it on changed circumstances and the prolonged trial.

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

07.07.2025
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Whether speaking/reasoned: Yes

Whether reportable: No.