

CRM-M-28659-2025

2025:PHHC:115235



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28659-2025
Reserved on: 09.07.2025
Pronounced on: 31.07.2025

Seema ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Suram Singh Rana, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
125	18.06.2024	Division No.8, Jalandhar	21(c), 27A, 25, 29, 61, 85 NDPS Act

1. The petitioner, incarcerated in the FIR captioned above, had come up before this Court for the second time under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. Per paragraph 15 of the bail petition, paragraph 13 of the status report, as well as the custody certificate, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	120	20.06.2002	15-61-85 of NDPS Act	Nawanshahr
2	255	07.12.2006	21 of NDPS Act	Nawanshahr
3	69	12.05.2007	21 of NDPS Act	Sadar Nawanshahr
4	125	30.09.2013	15, 29-61-85 of NDPS Act	Rahon
5	47	24.05.2019	21-29-31-61-85 of NDPS Act	Sadar Nawanshahr
6	28	08.05.2022	21, 29-61-85 of NDPS Act	City Balachor
7	122	25.07.2024	21-29 of NDPS Act	City Balachaur, District SBS Nagar
8	12	10.01.2015	186/353/333/332/148/149 IPC	Division No.7

3. The facts and allegations are taken from the reply filed by the State. On 18.06.2024, based on a chance recovery, the Police seized 01 kg of heroin from the possession of co-accused Satish Suman. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and the CrPC, 1973.

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4. During the investigation, accused Satish Suman disclosed that he used to procure heroin from Amritsar and Tarn Taran under the instructions of one Lucky, who is presently residing in the USA. Satish Suman also disclosed that after delivering heroin to customers, he used to hand over drug proceeds to Lucky’s wife, namely Neha, and had also sold heroin to the present petitioner, Seema.
5. 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.
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 1000 grams.
8. Dealing in Heroin in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	1000 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
<i>Quantity type</i>	Commercial
Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	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>		
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	

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Small Quantity	< 5 Gram	
Commercial Quantity	> 250 Gram	
0		
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 a substance means a preparation in which one gram of substance, if solid, or one mililitre of substance, if liquid, is contained in every one hundred mililitre of the preparation and so on in proportion for any greater or less percentage: 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.

9. Petitioner’s first limb of the argument is that she is a woman. However, she is also not entitled to bail on this ground. It is for the reason that although the legislature has provided a separate category for women, that category would not be automatically applicable, given the serious nature of the offence, coupled with a criminal history. Petitioner’s counsel neither referred to any studies, precedents, nor any reason why the petitioner, being a woman, is entitled to bail.

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10. Since the allegations against Lucky are that he was operating a drug cartel from the United States of America, in this regard, his phone numbers are mentioned in paragraph 7 of the status report, which reads as follows:-

“That the present petitioner namely Seema made a disclosure statement on dated 04.11.2024, wherein she stated that she had knowledge regarding the involvement of one person named Lucky, a resident of Ganna village, District Jalandhar (currently residing in the United States of America), who was known to her from before and was engaged in the supply of narcotic substances. The petitioner had communicated with Lucky from time to time on his mobile numbers: +1-209-229-05xxx, +1-209-227-9xxx, and +1-350-355-91xxx, including via WhatsApp. On Lucky's advice, one Satish Suman, son of Lehmbur Ram, resident of Ganna village, used to supply narcotics and had mobile numbers 70875-34xxx and 88726-34xxx. The petitioner had communicated with Satish Suman through WhatsApp on her mobile number 76962-14xxx. The petitioner further disclosed that after procuring the drugs from Satish Suman, she used to sell the same to her relative, Bhaga son of Som Lal, resident of village Jabbowal, District Shaheed Bhagat Singh Nagar, who used to further supply heroin. That approximately three months ago, Bhaga passed away. Upon learning of the arrest of Satish Suman in connection with a heroin seizure, the petitioner, out of fear and panic, disposed of the mobile phone and SIM card through which she had communicated with Lucky and Satish.”

11. Although the recovery is not from the petitioner, there is sufficient prima facie digital evidence connecting the petitioner with the main accused from whom 1 kg of heroin was recovered.

12. 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.

13. 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

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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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.

14. 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 her 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. The submissions made in the Court and the grounds in the bail petition do not shift the burden that 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.

16. Given the petitioner's criminal antecedents, the probability of the petitioner repeating the offence, if released on bail, is significantly higher.

17. In *Union of India (NCB) v. Khalil Uddin*, decided on 21 Oct 2022, 2022 SCC OnLine SC 2109, the 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.

18. 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.

19. Satisfying the fetters of S. 37 of the NDPS Act is like candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create

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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 substances is 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.

20. Adjudicating a bail petition of an accused with a prior criminal record places a significant and exacting responsibility on courts to exercise judicial discretion in a manner that is both reasoned and balanced to consider the countervailing impacts on the freedom of an accused and that of society and free from arbitrariness, as arbitrariness is antithetical to the rule of law. As a natural corollary, consideration of an accused's criminal history should be limited to cases where convictions have been secured, including those resulting in suspended sentences, and all pending First Information Reports (FIRs) in which the petitioner is formally arraigned as an accused. However, cases that culminated in acquittals, discharges, quashed FIRs, withdrawals of prosecution, or the filing of closure reports by the investigative authorities must be excluded.

21. Although the legal system upholds the principle that crime, not the individual, should be condemned for a history sheet, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles, and a recidivist often operates on precarious ground, where the weight of a significant criminal record creates an increasingly challenging terrain. Nonetheless, where the offense for which bail is sought is minor, such that arrest is generally unwarranted, or bail would ordinarily be inevitable, courts must not deny bail solely as a punitive measure intended to serve as a pre-trial deterrent. Such an approach contravenes the judiciary's obligation to uphold the foundational principles of justice and equity in bail proceedings. Whenever the quantity of drugs or psychotropic substances involved is massive, it would be an additional factor that would disentitle such an accused with criminal antecedents from bail.

22. Petitioner lastly seeks bail on the prolonged custody; however, she is not entitled to bail on custody for the reason that her custody in the present case is around 09 months,

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and the quantity of heroin is 4 times the commercial quantity, and furthermore, the petitioner has a massive criminal history, which also indicates the petitioner's involvement. She was even convicted in one FIR and sentenced to 10 years.

23. The petitioner's custody of around 09 months cannot be termed prolonged, given the minimum sentence prescribed for the offense.

24. 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.

25. Regarding the delay in the trial, if the trial does not conclude within three years 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 criminal history and shall decide it on changed circumstances and the prolonged trial.

26. Further liberty is also reserved to file an application by referring to the Judicial precedent of the Hon'ble Supreme Court in which the drug and weight are closer to those involved in the present case, and such an accused had similar criminal antecedents.

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

28. The duty of this Court does not end here, as it is one such rare case, where this Court is compelled to paint beyond its canvas.

29. The Court's dockets have ever-increasing cases under the NDPS Act, 1985, and these days, the trend of heroin being smuggled by the Indian Drugs Mafia from Pakistan's border is also more noticeable. Today, even the most advanced nations of the world are finding it increasingly difficult to counter and control the rising menace of illicit drug trafficking and resultant drug abuse. Thus, one step, that might be helpful to control the drug menace can be that whenever there is any involvement of foreign Nationals operating from foreign land, or drugs operations from outside India, when the quantity of drugs is significant, the senior officers from the rank of SSP and above must communicate the gist of investigation along with the information about such foreign National to the Ministry of Foreign Affairs. It is for the Ministry to consider whether to forward such details and information to the countries from which these criminals and mafias had carried out their operations.

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30. Given the above, in the present FIR, the concerned Senior Superintendent of Police/ Commissioner of Police are directed to send details of the information along with the phone numbers of Lucky to the concerned Secretary of the Ministry of Foreign Affairs, Government of India, to enable them to consider about communicating such inputs to their counterparts and intimate the United States of America about Lucky's involvement in heroin trafficking.

31. A copy of this order be sent to the Director General of Police for the State of Haryana, Punjab, and U.T. Chandigarh, to consider internal communications to their officers.

32. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

31.07.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: **YES.**