

In the court of Sh. Amit Kumar Garg, Judge, Special Court, Hoshiarpur.
(UID No. PB-0260)

CIS No.BA/2321/2025
CNR No: PBHO010067242025
Date of Institution: 22.08.2025
Date of order: 29.08.2025

Randesh Kumar @ Bablu aged 40 years S/o Joginder Pal R/o Village Bala
Kullian, PS Dasuya, District Hoshiarpur.

...Applicant/accused

Versus

State of Punjab

..Respondent

FIR No.91, dated 24.05.2024,
Under Section 22/29-61-85 of NDPS Act,
Police Station:Dasuya

First application for regular bail U/s 483 BNSS

Present: Sh.Sandeep Sharma, adv., counsel applicant-accused.
Sh.NS Gill, Ld. Addl. PP for the State.

ORDER

This order shall dispose of the first regular bail application of applicant/accused for the offence committed under Section 22/29-61-85 of NDPS Act, Dasuya.

2. Ld. Counsel for applicant/accused argued that the applicant/accused has been falsely implicated in the present case. That he is judicial custody since 24.05.2024. That as per allegation of prosecution, 11 intoxicant injections of Buprenorphine have been recovered from the possession of applicant/accused. The report of Chemical Examiner has not been received. The presentation of challan and its conclusion may take long time. So, no useful purpose will be served by keeping the applicant/accused

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behind the bars for indefinite period. It is prayed that the applicant/accused may kindly be released on bail.

3. On the other hand, Ld. Addl. PP for the State opposed the bail application on the ground that applicant/accused apprehended with the possession of 11 intoxicant injections each of Buprenorphine which falls within the ambit of commercial quantity. He argued that the accused does not deserve the concession of regular bail and he prayed that his bail application may kindly be dismissed.

4. I have heard the learned counsel for the applicant/accused and learned Addl. PP for the State and perused the record on the case file carefully.

5. This court is of the view that applicant/accused has been allegedly apprehended for possessing 11 intoxicant injections and the said recovery prima facie falls under the ambit of commercial quantity as injections are having Buprenorphine salt as per prosecution version.

6. At this juncture a reference to Section 37 of the Act, 1985 is apposite. This provision makes the offences under the Act cognizable and non-bailable. It reads thus :

“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.”

7. It is also to be borne in mind that the legislative mandate under Section 37 of the Act, 1985 is required to be adhered and followed. The Hon'ble Supreme Court of India in **State of Kerala & Ors. v. Rajesh & Ors. (2020) 12 SCC 122** has categorically interpreted the mandate and rigors of Section 37 NDPS Act. The pertinent observations are as under:-

"18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the NDPS Act. In [**Union of India v. Ram Samujh, (1999) 9 SCC 429 : 1999 SCC (Cri) 1522**], it has been elaborated as under:

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in

mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in **[Durand Didier v. State (UT of Goa), (1990) 1 SCC 95 : 1990 SCC (Cri) 65]** as under: (SCC p. 104, para 24)

'24. With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.' To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of

offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socioeconomic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under section 439 Cr.PC, 1973 but is also subject to the limitation placed by Section 37 which commences with non obstinate clause perative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates."

The Hon'ble Supreme Court of India in **Union of India v. Ajay Kumar Singh @ Pappu (SC)** : Law Finder Doc Id # 2174237 (D/d.

28.03.2023) held that in view of the provisions of Section 37 of the NDPS Act, 1985, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

Applying the afore-noted ratio laid down by the Hon'ble Supreme Court in **Union of India v. Ajay Kumar Singh (Supra)** to the case in hand, this Court finds that the applicant-accused fail to accomplish the embargo laid down under Section 37 of the Act, 1985.

8. ASI Gurnam Singh I.O. of the case also appeared and made statement that he has brought the police record pertaining to the present case. This is the first regular bail application filed by the applicant/accused. No other similar bail application is decided or pending in any other court. Seven other FIRs have been registered against the applicant/accused. He attached the bail proforma Mark A. He further stated that report of FSL is awaited. Perusal of the said proforma Mark A shows that total 7 other FIRs have been registered against the accused/applicant, out of which 5 FIRs are of NDPS Act, which shows that the applicant/accused is an habitual offender.

9. So, keeping in view heavy recovery of 11 injections of Buprenorphine and the specific bar U/s 37 of NDPS Act as well as the fact that applicant/accused is an habitual offender, applicant/accused does not

deserve the concession of regular bail and his bail application is dismissed.

Papers be attached with the remand papers.

Announced in open court:

Dated 29.08.2025

Rakesh Kumar, Steno

(Amit Kumar Garg)
Judge, Special Court,
Hoshiarpur
UID No. PB0260

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Judge, Special Court,
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