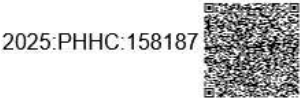


CRM-M-54246-2025
CRM-M-52685-2025



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54246-2025

Sukhchain Masih @ Lalla ...Petitioner

Versus

State of Punjab ...Respondent

CRM-M-52685-2025

AND

Amit Sharma alias Veeru ...Petitioner

Versus

State of Punjab ...Respondent

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL
01.10.2025	14.11.2025	FULL PRONOUNCED

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amarjeet Singh Prajapati, Advocate for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.
Ms. Shaveta Sanghi, DAG, Haryana.
Mr. Atul Gaur, AAG, Haryana.
Mr. Birender Bikram Attray, AAG, Haryana.
Mr. Manish Bansal, PP, UT, Chandigarh
Mr. Arav Gupta, Addl. PP, UT, Chandigarh.
Ms. Ashmeet Kaur Shah, Amicus Curiae
in CRM-M-52685-2025.

Mr. Harpal Singh Sidhu, Advocate for the petitioner
Mr. Jasdev Singh Thind, DAG, Punjab
in CRM-M-52685-2025.

ANOOP CHITKARA, J.

CRM-M-54246-2025 Sukhchain Masih @ Lalla

FIR No.	Dated	Police Station	Sections
37	30.7.2025	Shri Kartarpur Sahib Corridor	21/27A NDPS Act (Section

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		Police, District Batala, Punjab	29 NDPS Act added later on)
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CRM-M-52685-2025 Amit Sharma alias Veeru

FIR No.	Dated	Police Station	Sections
99	23.7.2025	Ranjit Avenue, Amritsar, Punjab	21B/27A NDPS Act and Section 29 NDPS Act (added later on)

1. Both of the above captioned bail petitions raise a significant common question of law and as such, are being decided together, even though the petition filed by the accused, Sukhchain, is for anticipatory bail, for which this Court had granted him an interim anticipatory bail; and the petition filed by Amit Sharma, is for regular bail, and this Court had earlier released him on interim bail.
2. On merits, the evidence against Sukhchain [FIR No. 37, dated 30.7.2025, Shri Kartarpur Sahib Corridor Police, District Batala, Punjab] is that on July 30, 2025, the Police arrested the co-accused, Gagandeep Singh, for possessing 5 grams of heroin and INR 1000/-, which the Police has termed as drug money, and during his custodial interrogation, he disclosed the petitioner, Sukhchain, as the seller of heroin. Apprehending arrest, Sukhchain applied for anticipatory bail; however, even with this kind of evidence and heroin falling on the lowest band of the intermediate category, Ld. Special Court dismissed the anticipatory bail. Feeling aggrieved, the petitioner, Sukhchain Masih, came up before this Court under §482 BNSS, 2023, seeking anticipatory bail by invoking the concurrent jurisdiction of the High Court. By a detailed order dated 24-09-2025, this Court, after analysing evidence, assessing the arguments, and applying the law, granted him interim anticipatory bail on merits and kept the matter for hearing on the question of law. The Counsel for the State of Haryana and the Union Territory of Chandigarh were also requested to make their submissions, because the outcome would impact them, and an Amicus was also appointed.
3. The facts in the bail petition [FIR No. 99, dated 23.7.2025, Police Station Ranjit Avenue, Amritsar, Punjab], filed by Amit Sharma, are that on July 23, 2025, the police recovered 21 grams of heroin and Rs 1000/- drug money from his possession. After analysing and appreciating the evidence from the FIR and the arguments addressed before the Court, and considering Amit's pre-trial custody of two months, by a detailed order dated 23-09-2025, this Court had granted interim regular bail on merits and adjourned the case for the State's written response.
4. I have heard counsel for the parties, as well as the States of Punjab, Haryana, UT Chandigarh, and Ld. Amicus, and its analysis would lead to the following outcome.

5. The status report dated 30.09.2025, filed in CRM-M-52685-2025, Amit Sharma v. State of Punjab, by the concerned DySP, is taken on record, and its relevant portion that mentions the prosecution case reads as follows:

“3. That the deponent humbly submits that the facts of the aforesaid case FIR No. 99, dated 23.07.2025 are that on 23.07.2025, the police party headed by SI Jagbir Singh posted at Police Station Ranjit Avenue, Amritsar, was present at Naka PR Chowk, Ranjit Avenue, Amritsar and were conducting checking of suspected persons and vehicles. There one youngster was seen while coming from ITI College Side, who on seeing the police party took out some heavy substance from his pocket, threw it on the ground and turned backwards. He was apprehended with the help of accompanying police officials by Jagbir Singh SI and enquired about his identity, who disclosed his identity as Amit Sharma @ Veeru (present petitioner). SI Jagbir Singh made efforts to join independent public witness in the police party before conducting personal search of the present petitioner Amit Sharma @ Veeru, but no one consented to join the police party. The present petitioner Amit Sharma @ Veeru was asked about the substance threw on ground by him. Then the petitioner Amit Sharma alias Veeru picked up the above heavy substance wrapped in one plastic packet, handed it over to SI Jagbir Singh and told him that it was Heroin, which he had thrown on seeing the police party. Therefore, the above said plastic packet was opened and checked by SI Jagbir Singh, during which 21 grams of heroin and drug money Rs. 1000/- were recovered from the plastic packet, which were taken into police possession in accordance with law. Hence, in pursuance of the aforesaid recovery effected from the present petitioner Amit Sharma @ Veeru, the present case FIR No. 99, dated 23.07.2025, under Sections 21 (b), 27A/61/85 NDPS Act, Police Station Ranjit Avenue, Amritsar was registered in this respect and the present petitioner Amit Sharma @ Veeru was arrested in this case.

6. It will also be relevant to reproduce paragraph 12 of the reply, which reads as under: -

“12. The role of the petitioner: That the deponent humbly submits that the present petitioner Amit Sharma @ Veeru was involved in drug peddling and 21 grams of Heroin and drug money Rs. 1000/- was recovered from him.”

7. A perusal of the FIR reveals that offences under §27-A of the NDPS Act are also invoked against the present petitioners.

8. Given the legislative mandate of §27-A and sub-clauses (i) to (v) of clause (viii-b) of §2, of the NDPS Act, 1985, if any person is arraigned as an accused for financing illicit traffic or harboring any offender, the sentence that can be imposed on conviction shall be not less than 10 years but may extend up to 20 years; and fine between INR 1 Lac to 2 lacs or even more.

9. It is relevant to refer to Section 37 of the NDPS Act, 1985, which reads as follows:

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.

10. In *Union of India v. Niyazuddin Sk.*, (2018) 13 SCC 738, the Hon'ble Supreme Court holds,

[6]. Section 37 of the NDPS Act contains special provisions with regard to grant of bail in respect of certain offences enumerated under the said section. They are:

- (1) In the case of a person accused of an offence punishable under Section 19,
- (2) Under Section 24,
- (3) Under Section 27-A and
- (4) Of offences involving commercial quantity.

11. The mischief is being played taking advantage of the provisions of §27-A of the NDPS Act because whenever §27-A is added as an offence in any FIR, the statutory rigors of §37 of the NDPS Act, 1985, apply, and the accused seeking bail must satisfy its twin conditions. On reading §37 of the NDPS Act, 1985, it is clearly inferable that to curb the drug menace, the legislature added teeth to make bail difficult for commercial quantities, drug finance, etc. The provisions are couched in negative language and explicitly mandate that to grant bail, the Court must record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offence. Even if the Court fulfills one of the conditions, namely, reasonable grounds for believing that the accused is not guilty of such an offense, it still cannot conclude a finding on the assurance that the accused is not likely to commit any such crime again. However, both

the twin conditions must be satisfied before a person accused of violating Section 27-A of the NDPS Act is released on bail. If either of these conditions is not met, the bail embargo remains in effect.

12. A perusal of the response filed by the State does not utter a single reason that, relying on which evidence, and on what basis, the Investigator as well as the Supervisory Officers, declared the cash of INR 1000/- found besides drugs as the drug money; and further, how drug money would make out financing illicit traffic. It does not mention an iota of evidence, not even worth a pinch of salt, on what basis the Investigator termed the cash of INR 1000/- as financing illicit traffic, as defined in §27-A of the NDPS Act, 1985. It is clear that simply because the accused also had cash along with the heroin, the Investigator assumed the same to be drug money and further misinterpreted drug money as “financing illicit traffic” to arraign the accused for violating stringently harsh provisions of §27-A of the NDPS Act. It was most likely done to invoke the stringent provision of §37 of the NDPS Act and appears to have caused serious prejudice to the accused.

13. The significant and moot question before this Court is how INR 1000/-, which was recovered along with heroin, constitutes an offence of financing illicit traffic of the prohibited contraband punishable under §27-A, NDPS Act?

14. Whenever §27-A is invoked, the bail is subject to satisfying the rigorous twin conditions of §37 of the NDPS Act. This Court is lifting the veil to rule out the possibility of §27-A being invoked capriciously to unwarrantedly trigger §37 of the NDPS Act, with an ulterior motive to make bail difficult, at least at the initial stage of pre-trial incarceration.

15. It shall be relevant to refer to §27-A of the NDPS Act, 1985, which reads as follows:

27A. Punishment for financing illicit traffic and harbouring offenders.
—Whoever indulges in financing, directly or indirectly, any, of the activities specified in sub-clauses (i) to (v) of clause (viii**b**)¹ of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:
Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

¹ Clause (viii**a**) re-lettered as clause (viii**b**) thereof by Act 16 of 2014, s. 2 (w.e.f. 1-5-2014).

16. It shall also be relevant to extract §2(viii**b**)² of the NDPS Act, which reads as follows:

(viii**b**) “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means—

(i) cultivating any coca plant or gathering any portion of coca plant;

(ii) cultivating the opium poppy or any cannabis plant;

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv),

other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes—

(1) financing, directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) harbouring persons engaged in any of the afore-mentioned activities;

17. Shorter Oxford English Dictionary defines financier as, “FINANCIER³-Engage in or manage financial operations provide oneself with capital.” The New Lexicon Webster’s Dictionary⁴ defines finance as follows:

finance (fainæns, fāinæns, finæns) 1. n. monetary affairs || the management of public or company revenue || (pl.) monetary resources
2. v.t. pres. part. financing past and past part. financed to provide with money or provide money for || to raise the money for financial (fainænfəl, finænfəl) adj. pertaining to financiers or financial operations [O.F.]

18. Financing illicit traffic in the context of §27-A read with §2(viii**b**) of the NDPS Act means dealing in any activities, production, manufacture, possession, sale, purchase,

² Clause (viii**a**) relettered as clause (viii**b**) thereof by Act 16 of 2014, s. 2 (w.e.f. 1-5-2014).

³ Shorter Oxford English Dictionary, 6th Edition, 2007.

⁴ The New Lexicon Webster’s DICTIONARY, Vol.1, 1988 Edition, Lexicon Publications, Inc., New York, Encyclopedic Edition.

transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances, including cultivating coca, opium poppy, cannabis, handling or letting out any premises for the carrying on of any of these activities, in contravention of the NDPS Act, 1985 or any rule or order, or any condition of any licence, term or authorisation issued, abetting, conspiring, financing, directly or indirectly, harbouring persons engaged in any of the activities mentioned above. Thus, the usage of the words ‘financing illicit traffic’ by the legislature, in §27A, suggests relational roles —financing, which nourishes the economy and logistics of illicit trafficking and harbouring, which means to give shelter, refuge, and “harboring a fugitive”.⁵ Only when the proceeds are proved to finance the organised chain can the provision of §27A be invoked.

19. “Drug money” is a broad concept encompassing all traceable cash, property, or assets, including property of substituted or equivalent value, derived from NDPS offences.

20. Section 27-A and 2(viib) of the NDPS Act nowhere, directly or indirectly, mentions any cash found along with the contraband as “Drug Money” or “Proceeds of Drug Sale”. Since the legislature did not use the term “Drug Money” in §27-A or 2(viib) of the NDPS Act, this Court cannot import such words because apparently the usage looks like a folly. Before invoking §27-A of the NDPS Act, one needs to show that the said money was to be used to finance the illicit traffic of drugs. Even when, along with contraband, any money or sovereign metal, etc., is recovered, §27-A does not permit an investigator to treat such money, etc., automatically, as “financing illicit traffic”.

21. In addition to 21 grams of heroin, what was recovered from the petitioner Amit Sharma were the currency notes amounting to INR 1000/-. Even if this amount was proceeds of sale of drugs, or drug money, i.e., illegally acquired proceeds of drug trafficking, it is liable for forfeiture under §68-C of the NDPS Act, or §3 of the Prevention of Money-Laundering Act, 2002, in accordance with law, and not under S. 27-A.

22. Sections 68A to 68Z of Chapter VA of the NDPS Act deal with “FORFEITURE OF ILLEGALLY ACQUIRED PROPERTY”. Section 68C prohibits holding illegally acquired property, and 68F defines seizure or freezing of illegally acquired property.

⁵ <https://www.merriam-webster.com/dictionary/harboring>

Section 68C reads as follows:

68C. Prohibition of holding illegally acquired property.— (1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter:

Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be.

23. In *Aslam Mohd. Merchant v. Competent Authority & Ors*, Cr.A 1053-2003, decided on July 08, 2008, the Hon'ble Supreme Court of India holds,

[17]. Chapter VA contains stringent provisions. It provides for forfeiture of property. Such property, however, as the heading of the Chapter shows, must be derived from or used in illicit traffic. Illegally acquired property in relation to any person to whom the chapter applies would mean only such property which was acquired wholly or partly out of or by means of any income attributable to the contravention of any provision of the Act or for a consideration wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from property.

[18]. It is, therefore, evident that the property which is sought to be forfeited must be the one which has a direct nexus with the income etc. derived by way of contravention of any of the provisions of the Act or any property acquired therefrom. What is meant by identification of such property having regard to the definition of 'identifying' is, that the property was derived from or used in the illicit traffic.

[23]. Before, however, an order of forfeiture can be passed, the Competent Authority must not only comply with the principles of natural justice, he is also required to apply his mind on the materials brought before him. It is also necessary that a finding that all or any of the properties in question were illegally acquired properties is recorded.

24. It shall also be relevant to refer to S. 2(u) and 3 of "The Prevention of Money-Laundering Act, 2002", and these provisions read as follows:

2(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or

where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.—For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;

3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

25. In *Vijay Madanlal Choudhary v. Union of India*, SLP (Crl) 4634-2014, decided on 27-07-2022, a three-judge bench of the Hon’ble Supreme Court holds,

[45]. It is common experience world over that money-laundering can be a threat to the good functioning of a financial system. However, it is also the most suitable mode for the criminals to deal in such money. It is the means of livelihood of drug dealers, terrorist, white collar criminals and so on. Tainted money breeds discontent in any society and in turn leads to more crime and civil unrest. Thus, the onus on the Government and the people to identify and seize such money is heavy. If there are any proactive steps towards such a cause, we cannot but facilitate the good steps. However, passions aside we must first balance the law to be able to save the basic tenets of the fundamental rights and laws of this country. After all, condemning an innocent man is a bigger misfortune than letting a criminal go.

26. The legal tender of the currency note is a promise, to be redeemed for equal value by the Government of India under a promise made through the Governor of the Reserve Bank of India. As per Section 26 of the Reserve Bank of India Act, 1934, the Bank is liable to pay the value of a banknote. This is payable on demand by the RBI, being the

issuer. The promissory clause printed on the banknotes, i.e., "I promise to pay the bearer the sum of Rupees ...", denotes the obligation on the part of the Bank towards the holder of the bank note."⁶

27. Even Section 269SS of the Income-tax Act, 1961, does not prohibit a person from keeping or using cash; it simply regulates the mode in which certain kinds of receipts, namely loans, deposits, or "specified sums" given as advances for immovable property, may be taken. Section 269SS expressly permits the taking or accepting of loans, deposits, or specified sums in cash up to an aggregate of ₹20,000 from any one person confirming that handling money in moderate amounts is not only lawful but also expected in day-to-day life. Any amount higher than ₹20,000 must be paid by an account-payee cheque, an account-payee bank draft, or an electronic transfer to a bank account.

28. Thus, keeping money, issued by a Sovereign, can never be an offence unless a statute makes it so or the tender itself has expired. Money is a legal tender—Cash is, however, narrower than money.⁷

29. The concept of money in India, when viewed through its statutory, institutional, and functional dimensions, reveals a layered architecture that extends well beyond coins and currency notes. Legally, money begins with legal tender—banknotes issued by the Reserve Bank of India, coins minted by the Government of India, and now the emerging digital rupee (CBDC), each recognised as sovereign liabilities under the RBI Act, 1934, and the Coinage Act, 2011.

30. S. 2(h) and (i) of The Foreign Exchange Management Act, 1999, [FEMA] defines money as follows:

2(h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

(i) "currency notes" means and includes cash in the form of coins and bank notes;

31. Section 2(b) of The Prize Chits and Money Circulation Schemes (Banning) Act,

⁶ Reserve Bank of India: [Home >> FAQs – Display](https://rbi.org.in/CommonPerson/english/scripts/FAQs.aspx?Id=3158)
<https://rbi.org.in/CommonPerson/english/scripts/FAQs.aspx?Id=3158>

⁷ Supreme Court of India, *Dhampur Sugar Mills Ltd v. Commissioner of Trade Tax, U.P.*, Civil Appeal No. 2635 of 2006, decided on May 12, 2006, Page 691 [2006-INSC-338]

1978, defines money as

2(b) “money” includes a cheque, postal order, demand draft, telegraphic transfer or money order;

32. Section 2(75) of The Central Goods and Services Tax Act, 2017, excludes currency that is held for its numismatic value (coins, etc., held as a collection) from the definition of money and defines money as follows:

2(75) “money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

33. Section 2(7) of The Sale of Goods Act, 1930 does not define ‘money’ or ‘currency’ but excludes money from the definition of the word ‘goods’, and it reads as follows:

2(7) “goods” means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

34. The concept of money has experienced evolution from commodity→ metallic currency →paper currency →digital currency. Reserve Bank of India Act 1934; Coinage Act 2011; Banking Regulation Act 1949; FEMA 1999; Payment & Settlement Systems Act 2007; Master Direction – PPIs (RBI) [Balances stored in PPIs, such as mobile wallets, are contractual obligations of the issuer to the holder]; Central Bank Digital Currency (e₹) [Concept Note (RBI 2022)] make the money as a legal tender and if anyone, based on any Statute, Sub-ordinate legislation, inquiry, or investigation, disputes such possession, the initial burden starts from the accuser and the presumption of the currency being a legal tender stays with the holder.

35. We are not yet a completely cashless economy, and almost everyone, as a rule and not as an exception, would keep currency notes with them, whether at home or while travelling. To label any discovered value proximate to narcotics as “drug money,” and then often leap to §27A, by giving an incorrect interpretation by analogy to the statute’s structure, would be contrary to its scope.

36. There is no prohibition on keeping money on one’s person, and several statutes explicitly affirm its ordinary use. For instance, Section 269SS of the Income-tax Act, 1961 allows loans, deposits, or specified sums up to ₹20,000 to be taken or accepted in

cash. Given the functions money serves—as a medium of exchange, unit of account, and store of value, it is a necessary and routine feature of personal and commercial existence that individuals carry or control some amount of it, whether as cash, deposit balances, or accessible digital value. In India’s contemporary financial ecosystem, where digital payments, mobile wallets, and CBDC apps coexist with cash, the law thus recognizes both actual and constructive possession of money as legitimate, integral aspects of economic agency, unified by their ultimate convertibility into sovereign legal tender.

37. In *Standard Chartered Bank v. Directorate of Enforcement*, 2005 (4) SCC 530, decided on 05-05-2005, a Constitutional bench of the Hon’ble Supreme Court holds,

[27]. ... It is true that all penal statutes are to be strictly construed in the sense that the Court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have included if thought of -All penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment.

38. Placing the word “financing” inside this continuum shows that §27A is designed to tackle the networked, profit-driven activity, and not the edges of consumption or ad-hoc street peddling. The mischief Parliament targeted was financial/organisational enablers of drug crime. Judicial construction must suppress financiers/harbourers, not inflate liability onto end-users or casual sellers. The genus is organised illicit traffic; the drug dependents, subsistence-levels, end-consumers, or personal-use dealings are outside that genus. The most effective and legally consistent way to define "drug money" is the "proceeds of crime" generated from illicit traffic in the NDPS Act and includes the substituted assets where the original proceeds are converted or intermingled. Drug money is the value that feeds drug crime.

39. Section 27A is a scalpel for the financial sinews of organised traffic, not a net for every case with cash near contraband. These are statutory fidelity and proportionality devices: they keep §27A aimed at the organised economy of drug crime. Even if, during interrogation by the police, custodial or otherwise, any accused confesses before the police that the money was drug money, still, based on this inadmissible evidence, such money cannot be treated as an offence under §27A unless there is some other primary evidence. Any interpretation that expands § 27A to petty actors or isolated transactions collides with legislative design and distorts graded culpability.

40. The lack of evidence of "financing illicit traffic" would militate strongly against

the application of Section 27A. It must be confined to conduct that demonstrates sustained or structural support for the trafficking network, rather than mere transactional-level procurement or consumption. If there is prima facie sufficient evidence of illicit financing of drug trafficking, then even the recovery of the drug or the drug money is not a statutory condition precedent for invoking Section 27A.

41. Section 54 of the NDPS Act, 1985, applies only where the accused is found in possession of “any narcotic drug or psychotropic substance or controlled substance” or any article or plant which he has reason to believe to be such. By its plain wording, the provision is confined to possession of narcotic or controlled substances and related articles. Currency notes, being legal tender, do not fall within the ambit of these expressions.

42. Section 35 of the NDPS Act, 1985, incorporates a statutory presumption regarding the culpable mental state of the accused. However, this presumption operates only in relation to an established actus reus — that is, once the prosecution has first proved, beyond a reasonable doubt, that the accused has committed a prohibited act under the Act, such as possession, transportation, or sale of narcotic or psychotropic substances. The presumption of mens rea is therefore contingent upon the prior establishment of the physical element of the offence.

43. Unless the prosecution first demonstrates through credible and substantive evidence that the money in question was either derived from or intended to facilitate illicit trafficking of narcotic drugs or psychotropic substances, the foundational actus reus necessary to trigger the presumption under Section 35 remains unestablished. In the absence of such proof, the statutory presumption of culpable mental state cannot lawfully attach to the mere possession of currency. To hold otherwise would amount to extending the operation of Section 35 beyond its legislative intent and would risk criminalizing conduct that is, in principle, lawful and constitutionally protected.

44. There is no statutory presumption that mere possession of cash indicates involvement in illicit traffic. Since possession of legal tender money is, in principle, a lawful and neutral act, any attribution of criminality to such possession must rest upon credible evidence signifying a plausible and proximate nexus between the seized money and the alleged offence. A contrary presumption would be against the principles of fairness, reasonableness, and proportionality, and would violate Article 21 of the Constitution of India, because it would reverse the burden of proof in a manner not sanctioned by the statute. When the possession of the legal tender is inherently lawful,

any contrary presumption of culpability in respect of such money would offend Article 21 of the Constitution unless supported by a specific statutory basis or tangible evidence of a plausible nexus with illicit traffic.

45. Since coins and paper currency are issued and guaranteed by the sovereign authority, the burden of proving their illicit derivation, i.e., illicit finance, illegal trafficking, drug money, or proceeds of crime, lies upon the investigating agency. To bring possession of money within Section 27A or Chapter VA (forfeiture provisions) of the NDPS Act, there must be a specific nexus shown between the money and illicit trafficking activities.

46. If law enforcement agencies were permitted to infer criminality solely from possession of money, it would undermine procedural fairness and dilute the evidentiary threshold required in criminal jurisprudence. Therefore, the initial burden lies with the investigative agency to demonstrate, through supportable indicators—such as prior transactions, communication records, or patterns of financial flows—that the seized cash bears a palpable link to illicit drug trafficking. Such a standard maintains the delicate balance between effective enforcement and the protection of individual rights. It reinforces the notion that suspicion, however strong, must not replace the necessity of reasoned belief grounded in objective facts.

47. In *K.K. Ashraf v. State*, 2009-KER-39346, decided on 13-09-2009, Kerala High Court observed,

[17]. Apart from mentioning Section 27A as an offence which is alleged to have been committed by the accused, there is no factual foundation for an allegation that they have committed an offence under Section 27A of the Act. There is no allegation that the petitioner indulged in financing, directly or indirectly, any of the alleged activities. There is also no allegation that the petitioner has harboured any person engaged in such activities. The materials on record show that the first accused Shanavas purchased the heroin from the petitioner (second accused) for a sum of Rs.1,80,000/- and some amount is due to the petitioner. That means the consideration was not paid in full to the petitioner. What is the balance amount due is not forthcoming. The question is whether sale of narcotic drug to a person reserving a part of the price to be paid by the purchaser later would amount to “financing” within the meaning of Section 27A of the Act. The expression “financing” is not defined in the Act. In Blacks Law Dictionary, the verbal meaning of “finance” is shown as “to raise or provide funds”. In Chambers Dictionary, the meaning of “finance” is shown as “to manage financially; to provide or support with money”. If a person has sold narcotic drugs or psychotropic substances on credit, could it be said that he has indulged in financing? If the full amount is realised by such sale, it cannot be said

that he has indulged in financing. What difference it would make if a part of the consideration is reserved to be paid at a later point of time? To my mind, it cannot be said that receipt of part payment of the sale consideration of the contraband reserving the balance to be paid at a later point of time would attract the offence of “financing” within the meaning of Section 27A of the Act. Sale of a narcotic drug on credit is different from financing the activity of sale of a narcotic drug. It cannot be said that a person who did not receive the value in full of the drug would be in a more disadvantageous position than a person who got the full price of the same. The expression “financing” is not related to the payment of the value of the narcotic drug. On the other hand, it involves an activity other than sale or purchase of the narcotic drug, in which a person invests or provides funds or resources for facilitating the activities mentioned in sub-clauses (i) to (v) of clause (viii) of Section 2 of the NDPS Act. “Financing” involves the presence of a party who is not a party to the sale of the drug...

[18]. Thus it is clear that in order to attract Section 27A, there must be an allegation of financing or harbouring as mentioned therein...

48. Once the veracity of prosecution case against the respondent is in serious doubt, further analysis on the other factors about financing the drug trafficking and harbouring of offender need not be undertaken because, when the story of planting of contraband is removed out of consideration, all other factors by which respondent is sought to be connected with such alleged planting could only be regarded as false and fanciful, at least at this stage.⁸ Therefore, finance of “illicit traffic”, within the meaning of Section 27-A of NDPS Act, connotes drug peddling on regular and continuous basis, different from illicit sale/purchase of contraband items⁹. Thus, if Section 27A is read in its entirety, it indicates that financing is in respect of illicit traffic through which the financier expects monetary or other returns.¹⁰

49. Even if, on arrest, the accused confesses before the Police that the cash which was recovered is the proceeds of drug sale, still, such a confession by an accused in police custody shall not be proved, as mandated under Section 23 (1) and (2) of BSA, 2023.

50. Mere association with drug offenders or recovery of money from the accused who named another person as the seller of the drug, and when such a person is arraigned as a co-accused, merely based on disclosure statement of the principal accused of purchasing drugs from such co-accused and without any other allegation, such disclosure does not *prima facie* make out an offence of “financing illicit traffic” and is insufficient to invoke

⁸ Supreme Court of India, in *State of West Bengal v. Rakesh Singh*, Cr.A 923-2022, decided on 11 July 2022, para 16.3.

⁹ *Mohd. Aslam v. UT of J&K*, CRM(M) No. 157-2025 & Bail App No. 297-2024. Decided on 19.08.2025, Para 32

¹⁰ Bombay High Court in *Rhea Chakraborty v. The Union of India*, BA-st-2386-2020, decided on 07 Oct 2020, para 65

§27-A of the NDPS Act against such co-accused.

51. Section 27-A is specific, restrictive, and requires concrete evidence of financing or harboring, and the statutory ingredients require either the active provision of resources for illicit traffic or the sheltering of offenders, and in countenance, whenever any Investigating agency invokes the stringent provisions of Section 27A, the possibility is writ large that mischief is being carried out to make the offence non-bailable and bail difficult by triggering the legislative restrictions placed on bail through Section 37 of the NDPS Act.

52. When §27A of the NDPS Act has been invoked without any evidence of illicit financing or trafficking of drugs, the restrictions imposed under §37 of the Act shall neither apply nor frustrate the rule of bail, because when the restrictions of §37 do not apply, the factors for bail become similar to those under the regular statutes.

53. In the present matters, while possession of a narcotic substance by Amit Sharma may constitute an offence under the NDPS Act, possession of money or currency notes does not, per se, fall within the ambit of any prohibited act under the statute. Currency, being a legal tender, is by its very nature neutral and lawfully possessed. Hence, mere recovery of some cash in conjunction with contraband does not, in itself, constitute an actus reus under the NDPS framework. Sukhchain Masih was arraigned as an accused on the basis of the disclosure statement of Gagandeep Singh, who was arrested for possessing 5 grams of heroin and INR 1000/- as drug money.

54. Given above, the petitions are allowed, and the interim orders, in both the cases mentioned above, are made absolute. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

November 14, 2025
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	YES