



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

238+245

1)

**CRM-M-36054-2025**  
**Decided on : 06.08.2025**

Balraj Singh @ Raja Singh

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

2)

**CRM-M-41274-2025**

Gurmail Singh

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

**PRESENT:** Mr. Raghav Gulati, Advocate,  
Mr. Rahul Kesar, Advocate and  
Mr. Varun Sharma, Advocate, for the petitioner(s).

Mr. Jasdeep Singh, Addl. AG, Punjab.

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**SANJAY VASHISTH, J. (Oral)**

1. This order shall dispose of CRM-M-36054-2025 & CRM-M-41274-2025, as both the petitions are interconnected and have arisen out of same FIR. However, the lead case is CRM-M-36054-2025.

2. The instant petitions have been filed under Section 483 of BNSS, 2023 (earlier Section 439 Cr.P.C.), for grant of regular bail to the petitioners, during the pendency of trial, who have been booked in a criminal case arising out of First Information Report, as detailed here-under:-

Name of Petitioner(s)	FIR No.	Date	Section(s)	Police Station	District
Balraj Singh @ Raja Singh (petitioner in CRM-M-36054-2025)	0016	22.03.2025	18(C) of NDPS Act, 1985 [S. 27 of NDPS Act, added later on]	Nandgarh	Bathinda
Gurmail Singh (petitioner in					

CRM-M-41274-2025)					
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3. Allegation of the prosecution is that from the Dera Baba Garib Das, petitioner – Gurmail Singh (in CRM-M-41274-2025) is posted as ‘Treasurer’ in the Dera and petitioner – Balraj Singh @ Raja Singh (in CRM-M-36054-2025), is posted as ‘Sevadar’ in the said Dera. On the basis of secret information, premises of Dera were raided, wherein, poppy plants were found cultivated and after uprooting the same, it was found as 70 kg. and both the petitioners were arrested, while they were present in the premises of Dera.

4. Learned counsel for the petitioners argues that only on the basis of presence of the petitioners in the Dera, that too being employed to serve there, would not give cause to raise assumption that anyone of them was in conscious possession of the cultivated plants. Admittedly, none of the petitioners mentioned here-above, were posted as Gardener/Mali in the Dera or working with a responsibility to look after and irrigate the plants. Therefore, they cannot be alleged to be in conscious possession of the cultivated poppy plants.

5. Second argument of learned counsel for the petitioner is that NDPS Act does not prescribe any classification of the quantity of the poppy plants, as to how, it would be measured or weighed. In support of the submissions, counsel refers to the notification dated 19.10.2021, published in the Gazette of India.

6. To substantiate the plea that the recovered uprooted poppy plants cannot be categorized, as to whether same would fall under the category of ‘commercial’ or ‘non-commercial’ quantity. Reliance is also placed upon SO-1055(E), dated 19.10.2001, published in the Gazette of

India, Extra., Pt.II Section 3(ii) dated 19.10.2001, and Note No.3, appended to the table thereto, which reads as under:

“3. “*Small Quantity*” and “*Commercial Quantity*” with respect to cultivation of opium poppy is not specified separately as the offence in this regard is covered under clause (c) of section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.”

7. Noticing the Note No.3, from the aforementioned notification published in the Gazette of India, *prima facie*, it appears that the offence would not be punishable u/s 18(C)/27 of the NDPS Act, because there is no definite criteria to ascertain, whether the poppy-plants weighing 70 kg. in total, would actually form opium of how much quantity on weighing of it. In the absence of any idea or certainty of the quantity, prosecution would not be able to claim that the recovered poppy plants can be classified under the category of ‘commercial’ quantity as per the NDPS Act. In view of this, embargo under Section 37 of the NDPS Act, would also not be applicable.

8. To fortify the observation recorded herein, reliance is placed upon the case of similar nature dealt with by the High Court of Rajasthan, wherein, the learned Single Bench while dealing with the similar issue in ***Ladu Ram v. State of Rajasthan, Through PP, 2025 SCC OnLine Raj 2143***, (SB Criminal Miscellaneous Bail Application No. 4883/2025, Decided on: 13.05.2025), granted bail to the accused therein by recording the categorical observation that in the absence of proving the recovered quantity as a commercial quantity, cultivated poppy/opium plants cannot be claimed to be falling under the category of commercial quantity.

9. While dealing with the issue, learned Single Bench followed the observations made by the other Coordinate Bench of the Rajasthan High

Court in SBCRLMB No.5293/2024, wherein, observations made in the case of SBCRLM4thB No.6894/2022, in the case of “Bhajan Lal v. State of Rajasthan”, Decided on: 25.05.2022, were noticed. For reference, same are reproduced here-under:-

“8. The petitioner is booked for offence of cultivation of poppy plants which is covered under Section 8(b) of the NDPS Act. Section 18 of the NDPS Act makes provision for punishment of contravention in relation to opium poppy and opium. Sub-clause (b) of Section 18 prescribes punishment for small quantity. It also provides punishment for commercial quantity and all other cases are covered under Sub-clause (c). The cultivation of opium poppy plant would fall under the category (c) of Section 18 of the NDPS Act. No specific quantity of plants are defined in Clause (c) of Section 18 of the NDPS Act. This Court has dealt with the issue related to the present bail application being SBCRLM4thB No. 6894/2022 in the case of Bhajan Lal v. State of Rajasthan decided on 25.05.2022. The relevant paras are being reproduced as under:-

"2. The brief facts of the case are that the police received information that illegal opium is being cultivated on a land measuring about 110 x 57 feet and that the cultivation is becoming ripe and is nearing the stage of harvesting. Police officials went to the spot and found a 4-metre mud boundary encapsulating the crops of opium and plants of chicory and fennel were planted on either sides of the opium cultivation. The Halka Patwari present at the spot informed that the land is Khasra No. 224 and that the petitioner has been illegally encroaching upon the land of one Babulal since past 25 years. The people nearby also affirmed that the opium cultivation belonged to Bhajan Lal and that he does not have any license. Upon questioning, Bhajan Lal confirmed that he does not have any license for opium cultivation. As per provisions of NDPS Act, photographs were clicked and all the opium plants were uprooted from the grounds along with the roots and 36 piles were made. Two samples of 1 kg each, marked A (chemical sample) and B (control sample), were taken from the seized plants for investigation.

3. Learned counsel for the petitioner submits that a false case has been foisted against the petitioner and he has nothing to do with the alleged offence. The petitioner is booked for offence of cultivation of opium poppy which is covered under Section 8(b) of the NDPS Act. Section 18, which discusses the punishment for contravention in relation to opium poppy and opium, prescribes punishment for small quantity in sub-clause (a), for commercial quantity in sub-clause (b) and all other cases are covered under sub-clause (c). In the present case, the penal provision applicable to the petitioner is sub-clause (c) of Section 18 as there is no specific quantity which has been defined in the Act for cultivation of opium poppy rather Note no. 3 appended to the notification specifying small and commercial quantity S.O. 1055 (E) dated 19th October, 2001 published in the Gazette of India, Extra., Pt. II Sec. 3(ii) dated 19th October, 2001 states that "Note 3.- "small quantity" and "Commercial Quantity" with respect to cultivation of opium poppy is not specified separately as the offence in this regard is covered under clause (c) of section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985". The embargo contained in Section 37 is not attracted as there is no question of commercial quantity in the present case.”

*Similar consideration in detail has been made by this Court in the case of Vinod Kumar v. State of Rajasthan bail application being, SBCRLMB No. 9279/2022 decided on 07.07.2022. The para Nos. 4 & 5 are reproduced here under:-*

- "4. Heard learned counsel for the parties. Perused the material available on record.
- i) *The case of the prosecution is that the petitioner was cultivating ganja plants in his field and the quantity of the recovered plants is well above the commercial limit specified for contraband ganja. Section 2 of the NDPS Act contains the definitions and clause (iii) of the same defines what "cannabis (hemp)" means, through three sub-clauses. The sub-clause (b) of clause (iii) defines 'ganja' as "the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated". Sub-clause (vii a) of Section 2 of the N.D.P.S. Act defines "commercial quantity" as any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette, in relation to narcotic drugs and psychotropic substances. The notification in effect that specifies small and commercial quantity for narcotic drugs and psychotropic substances is S.O. 1055 (E) dated 19th October, 2001 published in the Gazette of India, Extra., Pt. II Sec. 3(ii) dated 19th October, 2001 and the commercial quantity specified therein for ganja is 20 kgs.*
- ii) *As averred, for the purpose of determining the total weight of the recovered contraband ganja, the whole plants were taken into consideration, including the seeds, roots, stems and leaves, alongwith the soil as well whereas only the flowering or fruiting tops of the cannabis plants should have been taken for weighing of contraband ganja as per the defining clause under N.D.P.S. Act. As there was no bifurcation of seeds and leaves from the flowering or fruiting tops before weighing the recovered contraband and the total weight of the recovered contraband is just 2 kgs and 700 gms above the commercial quantity, it is safe to infer that the actual weight of recovered ganja would be less than the claimed weight and therefore, below the stipulated commercial quantity. III) The cultivation of "any cannabis plant" is prohibited and made an offence under sub clause (b) of Section 8 of the N.D.P.S. Act.*

*Further, it is Imperative to mention Section 20 of the N.D.P.S. Act, which discusses the punishment for contravention in relation to cannabis plant and cannabis.*

*Section 20 of the N.D.P.S. Act reads as follows:-*

*20. Punishment for contravention in relation to cannabis plant and cannabis.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder-*

- a) *cultivates any cannabis plant; or*  
b) *produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter State or uses cannabis, shall be punishable-*
- (i) *where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and*  
(ii) *where such contravention relates to sub clause (b)-*  
(A) *and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;*  
(B) *and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous Imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;*

*(C) and Involves commercial quantity, 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.*

*Contravention of provisions of the N.D.P.S. Act by cultivation of any cannabis plant is covered in clause (a) of Section 20 and contravention by production, manufacture, possession, sale, purchase, transportation, import inter-state, export inter-state or use of cannabis is covered under clause (b) of Section 20. For the contravention contained in clause (b), punishments have been particularised as per the quantities, namely small, intermediate and commercial quantities in sub-clause (i) but for the contravention contained in clause (a), maximum punishment for a term of ten years rigorous imprisonment has been prescribed without any specification of quantities. Thus, the corresponding punishment-prescribing provision for offence under Section 8(b), relating to cannabis plant, would be Section 20(a)(i).iv) Grant of bail for offences stipulated in the N.D.P.S. Act is interdicted by the provisions of Section 37. Section 37 states that any person who is accused of an offence under Sections 19, 24 or 27A and of an offence involving commercial quantity cannot be granted bail. Neither the offence in the present case is covered by Sections 19, 24 or 27A of the N.D.P.S. Act and nor does the recovered ganja fall in the category of commercial quantity. Therefore, it can safely be inferred from the above observations that the petitioner need not face the rigour of Section 37 with regard to provision of bail in the present case.*

*v) This Court has passed a detailed order in S.B. Criminal Misc. IV Bail Application No. 2676/2022 titled Kallu Nath v. State of Rajasthan, wherein in a similar matter relating to cultivation of opium poppy, bail was granted to the accused as the impediment contained in Section 37 of N.D.P.S. Act was not attracted.*

*5. Considering the arguments advanced by the counsel for the parties, looking to the over all facts and circumstances of the case and the dicta contained in the judgment passed in Kallu Nath (supra), this court deems it just and proper to enlarge the petitioner on bail."*

*So also in the case of Kallu Nath v. State of Rajasthan being S.B. Criminal Misc. IV Bail Appln. No. 2676/2022 decided on 27.05.2022.*

*"4. Heard learned counsel for the parties. Perused the material available on record. The case of the prosecution is that the recovered contraband, i.e. opium poppy plants that were being cultivated, qualify as contraband of commercial quantity. Sub-clause (viia) of Section 2 of the NDPS Act defines "commercial quantity" as any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette, in relation to narcotic drugs and psychotropic substances. The notification in effect that specifies small and commercial quantity for narcotic drugs and psychotropic substances is S.O. 1055 (E) dated 19th October, 2001 published in the Gazette of India, Extra., Pt. II Sec. 3(ii) dated 19th October, 2001 and Note no. 3 appended to the notification*

*"Note 3.- "small quantity" and "Commercial Quantity"*

*with respect to cultivation of opium poppy is not specified separately as the offence in this regard is covered under clause (c) of section 18 of the Narcotic Drugs and Psychotropic Substances*

*Act, 1985". As per the Notification, there is no defined amount for cultivation of opium poppy that can be treated as either small or commercial quantity. Section 18 of the NDPS Act, which discusses the punishment for contravention in relation to opium poppy and opium, prescribes punishment for small quantity in sub-clause (a), for commercial quantity in sub-clause (b) and all other cases are covered under sub-clause (c). The offence of cultivation of opium poppy is prohibited under sub-clause (b) of Section 8. Thus, the corresponding punishment-prescribing provision for offence under Section 8(b) would be Section 18(c). Grant of bail for offences stipulated in the NDPS Act is interdicted by the provisions of Section 37. Section 37 states that any person who is accused of an offence under Sections 19, 24 or 27A and of an offence involving commercial quantity cannot be granted bail. The offence in the present case is not covered by Sections 19, 24 or 27A and the commercial quantity for cultivation of opium poppy is not defined. Therefore, it can be safely inferred from the above observations that the restriction contained under Section 37 on provision of bail will not operate in the present case.*

*5. Considering the observations made herein above and looking to the possibility that the trial may take long time to conclude, this court deems it just and proper to enlarge the petitioner on bail. It is to be clear that the observations made in the present order shall not influence the trial judge in any manner and are limited to the justifiable disposal of this bail application only."*

*As considered above, in the given circumstances, the embargo of Section 37 of the NDPS Act would not come in the way of granting bail to the petitioner. xxxxxxxxx".*

10. As noticed here-above, in **Laddu Ram's case** (supra) and also in **Bhajan Lal's case** (supra), the Rajasthan High Court has consistently referred to the notification dated 19.10.2001, published in the Gazette of India, and has concluded that the quantity of contraband, merely on the basis of uprooting poppy plants, cannot be determined, so as to ascertain whether the same falls within the category of 'commercial' or 'non-commercial' quantity.

11. In view of the observations recorded here-above, with regard to the facts of the case and the applicability of S.O. No. 1055(E), dated 19.10.2001 and Note No.3 appended to the table thereto, this Court finds that the prayer of the petitioners in their respective regular bail petitions is genuine and, accordingly, the same deserves to be allowed.

12. Consequently, prayer made in the present petitions are **allowed**.

Petitioners are ordered to be released on bail, subject to their furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

13. Needless to observe that the petitioners shall not extend any threat and shall not influence any prosecution witness in any manner directly or indirectly.

14. The observation made here-in-above shall not be construed as an expression of opinion on the facts of the case and the Trial Court is expected to decide the case on the basis of complete evidence available on record.

15. It is further made clear that if, in future, petitioners are directly found indulged in similar kind of activities, this order shall be deemed to be cancelled.

**Petitions stand disposed of.**

Pending misc. application(s), if any, also stand disposed of.

Photocopy of this order be placed on the file of other connected case.

**(SANJAY VASHISTH)  
JUDGE**

**August 06, 2025**

*J.Ram*

*Whether speaking/reasoned: Yes/No*

*Whether Reportable: Yes/No*