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318 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17717-2025
Reserved on: 07.05-2025
Pronounced on:19.05. 2025

MAHINDER SHAH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Nikhil Batta, Advocate (through video conferencing)
For the petitioner.

Mr. Sukhwinder Singh Rai, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
40	03.05.2023	Anaj Mandi, Patiala	18/61 and 85 of NDPS Act

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. Per paragraph 10 of the bail application/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	36	12.04.2011	20/61/85 of NDPS Act	GRP, Sirhind
2.	234	19.10.2019	325/323/34 IPC	Tripuri

3. The facts and allegations are taken from the reply filed by the State. On 03.05.2023, when the police officials were on patrolling duty, they noticed one person coming on foot from railway line side, who on seeing the police, flustered and threw backpack and tried to turn away which raised suspicion that he was carrying some contraband. Subsequently, he was apprised of his rights to get his search conducted under Section 50 of NDPS Act. However, he was satisfied with the search from the investigator himself. Upon search of the bag thrown by the petitioner, police recovered 04 kg of opium and he was arrested. The laboratory also tested the contraband. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC,



1973.

4. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody.

5. Counsel for the petitioner on instructions submits that he has no objection, if while granting bail, this Court imposes any stringent conditions and undertakes that petitioner shall not indulge himself in the offence involving the commercial or intermediate quantity or the offence which falls under Section 19/24/27A of NDPS Act. He further submits that if the petitioner involves himself in the said offences, where the sentence imposed is more than 07 years, he has no objection if the State files application for cancellation of his bail. He further contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

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

REASONING:

7. As per para 10 of reply, the weight and name of drug is 4 kg of opium.

8. 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.

9. The petitioner is entitled to bail because for the same drug and when the quantity involved was either more or closer to the quantity seized in the present FIR, Hon'ble Supreme Court had granted bail on prolonged custody in the following judicial precedents:

10. In *Md. Tajiur Rahaman v. The State of West Bengal*, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon'ble Supreme Court holds,

[2]. The allegations are that upon receipt of a secret information, the police conducted a raid in which the petitioner and the co-accused Rabiul Alam were arrested and 4 kgs., 920 gms of opium latex was seized.

[4]. It is not in dispute that after filing of chargesheet and framing of charges, the trial has commenced but only examination-in-chief of P.W.1 has been completed. However, there are 12 witnesses, who are proposed to be examined by the prosecution.

[5]. It may be mentioned that the High Court while declining bail to the petitioner has directed for conclusion of trial within one year. But it seems that regardless thereto, the trial has not been expedited as no effective hearing took place for the last 2/3 dates. That being so, the conclusion of trial is likely to take some reasonable time. The petitioner does not have any criminal antecedents. He has already spent one year and six months in custody. The continued incarceration of the petitioner will not serve any useful purpose.



[6]. Taking into consideration the period spent by the petitioner in custody and the fact that the petitioner does not have any criminal antecedents, we are satisfied that the conditions prescribed under Section 37 of the NDPS Act can be relaxed at this stage.

11. Given this, the criminal antecedents are also not legal grounds for denying the rigors of S. 37 of the NDPS Act at this stage.

12. Per the custody certificate dated 04.05.2025, the petitioner's custody in this FIR is of 01 year, 11 months and 28 days.

13. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act¹.

14. Following the judicial precedent mentioned above, without commenting on the case's merits, and considering the petitioner's pre-trial custody, weight of the drugs coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage. However, this order shall come into force from the time it is uploaded on this Court's official webpage.

CONDITIONS:

15. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

16. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.
3.	Mobile number (If available)
4.	E-Mail id (If available)

17. This order is subject to the petitioner's complying with the following terms.

18. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence,

¹Supreme Court of India, in Rabi Prakash v. The State of Odisha, SLP (Crl) 4169-2023, Para 4, decided on 13 July 2023



influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

19. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days of release from prison and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

20. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

21. In Md. Tajiur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon'ble Supreme Court holds in Para 7, "It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences."

22. **This bail is conditional, and the foundational condition is that if the petitioner repeats the offence where the quantity involved is more than half of the intermediate,**

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or commercial, or violates S. 19, 24, or 27-A of the NDPS Act, then the State shall file an application for cancellation of this bail before the Trial Court, which shall have discretion to cancel this bail.

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

24. A certified copy of this order is not required for furnishing bonds. An Advocate for the Petitioner can download the order from the Court's official web page and attest it as a true copy. If needed, the attesting officer can verify its authenticity online and use the downloaded copy to attest bonds.

25. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

**(ANOOP CHITKARA)
JUDGE**

19.05.2025

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Whether speaking/reasoned: Yes

Whether reportable: No.