

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-37403-2025  
Reserved on: 01.08.2025  
Pronounced on: 26.08.2025

Gagan @ Gogi

...Petitioner

Versus

State of UT Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jasbir Singh Dadwal, Advocate  
for the petitioner.

Mr. Manish Bansal, PP, UT, Chandigarh with  
Mr. Navjit Singh, Advocate  
for the respondent.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
01	02.01.2025	ANTF, Sector 11, UT Chandigarh	21 of NDPS Act (Section 20/22/29 of NDPS Act and 111 BNS added subsequently)

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 15 of the bail application and paragraph 11 of status report, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Year	Offenses	Police Station
1.	90	2017	20 of NDPS Act	Maloya
2.	160	2019	22 of NDPS Act	Maloya
3.	164	2023	21, 29, 61, 85 of NDPS Act	Pinjore

3. The facts and allegations are taken from the status report filed by the State. On 02.01.2025, based on prior information, the Police seized 30 grams of Heroin including polythene pouch from the possession of co-accused who in her disclosure statement named the petitioner as the supplier of drugs. After arrest of the petitioner, 24.82 grams of Heroin and 77.80 grams of Charas, five sharp edge knives, one dummy pistol, one electronic scale and 12 grams pouches with contraband residue were recovered from his residence. On the disclosure of petitioner, two more co-accused were arrested and 50.61 grams and 20.40 grams of Heroin respectively was recovered from them. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.

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

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 petitioner's counsel submits that the petitioner would have no objection whatsoever to any stringent conditions that this Court may impose, including that if the petitioner repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, or commits any offence under the NDPS Act, where the quantity involved is more than half of the intermediate, or commercial quantity, or violates S. 19, or 24, or 27-A of the NDPS Act, the State may file an application to revoke this bail before the concerned Special Judge or Sessions Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and may do so at their discretion, to which the petitioner shall have no objection.

7. The State's counsel opposes bail and refers to the status report.

**REASONING:**

8. As per paragraph 9 of the status report, the name of the contraband recovered from petitioner is **Charas** and its weight is 77.8 grams, and it constitutes an offense under the following provisions and notifications:

Substance Name	Cannabis and cannabis resin/ Charas/ Hashish/ Sulpha
Quantity detained	77.8 Gram
Quantity type	Small
<i>Drug Quantity in % to upper limit of Intermediate</i>	7.78%

<i>Drug's Small &amp; Commercial Qty. suggested by Committee report</i>	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)
Punishable U/s	S.20(b)(ii)A of NDPS Act, 1985

<i>Specified as small &amp; Commercial in S.2(viia) &amp; 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
Sr. No.	23	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Cannabis and cannabis resin	

Other non-proprietary name	CHARAS, HASHISH
Chemical Name	EXTRACTS and TINCTURES OF CANNABIS
Small Quantity	< 100 Gram
Commercial Quantity	> 1000 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.20 & S.2(iii) NDPS Act, S.O.821(E)	11/14/1985

Sr. No.	S.2(iii)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	<p>S.2(iii) “cannabis (hemp)” means—</p> <p>(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;</p> <p>(b) ganja, that is, 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; and</p> <p>(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;</p> <p>(iv) “cannabis plant” means any plant of the genus cannabis; S. 2(viii b)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means—</p> <p>(i) cultivating any coca plant or gathering any portion of coca plant;</p> <p>(ii) cultivating the opium poppy or any cannabis plant;</p> <p>(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;</p>

9. Thus the recovered amount of Charas falls in the category of a small quantity.

10. In *Kuldeep Singh alias Keepa v. State of Punjab*, CRM-M-60671-2024, Neutral Citation no. 2024-PHHC-170456, Decided on: 18.12.2024, this Court holds,

[83]. Consequently, when the contravention under the NDPS Act involves ‘Small Quantity’, the offences are ‘Bailable’. When the drug quantity falls in small category, the offence is bailable by operation of BNSS, 2023. Thus, any person accused of such an offence is entitled to bail without filing any bail application, subject to furnishing the requisite bail bonds.

11. However, apart from Charas, heroin was also recovered.

12. As per paragraph 9 of the status report, the name of the recovered contraband is **Heroin** which was recovered from all the accused persons including the petitioner and its weight is 125 grams, and it constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	125 Gram
Quantity type	Intermediate
<i>Drug Quantity in % to upper limit of Intermediate</i>	50.00%

<i>Drug's Small &amp; Commercial Qty. suggested by Committee report</i>	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)
Punishable U/s	S.22(b) of NDPS Act, 1985

<i>Specified as small &amp; Commercial in S.2(viia) &amp; 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	
Small Quantity	< 5 Gram	
Commercial Quantity	> 250 Gram	

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	<p>2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts;</p> <p>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 millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage:</p> <p>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.</p>

13. Given the quantity involved, the rigors of Section 37 of NDPS Act would not apply in the present case.

14. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial

quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

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

16. In *Rajesh v. The State of Haryana*, decided on 20-11-2024, SLP (Crl) 14037-2024, Hon'ble Supreme Court holds,

The petitioner is an accused in a case bearing FIR No.67 dated 25.01.2024 registered with Police Station Majesar, District Faridabad, Haryana for the offences punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter called "NDPS"). The allegation against the petitioner is that there is an alleged recovery of 1.200 kgs of ganja (contraband article) from him. The bail application of the petitioner was dismissed by the High Court. He has already undergone about 10 months in jail. Being aggrieved, he approached this Court.

Heard learned counsel for the petitioner and the respondent State.

The bail has not been granted by the High Court only for the reason that the petitioner is a habitual offender. Although, the contention of the learned counsel for the petitioner is that out of four cases, there is only one case of NDPS against the petitioner and the remaining cases (three in number) relate to Excise Act and not of NDPS.

Under these circumstances, considering the quantity of the contraband article and the period of incarceration of the petitioner, we are of the opinion that a case of bail is made out for the petitioner.

17. Per the custody certificate dated 01.08.2025, the petitioner's custody in this FIR is 06 months and 12 days.

18. 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 Act<sup>1</sup>.

19. Following the judicial precedent mentioned above, without commenting on the case's merits, and considering the petitioner's pre-trial custody, the weight of the

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

contraband, coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage. However, this order shall take effect from the time it is uploaded to this Court's official webpage.

20. 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 or 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.

21. 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)

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

23. 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, 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.

24. Given the background of allegations against the petitioner, it becomes paramount to protect the detection squad, 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 society; it would also restrain the accused from influencing the witnesses and repeating the offense.

25. 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 the Hon'ble Supreme Court held 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."

26. In Md. Tajjur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, the 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."

27. The significant consideration for granting bail is that the Court aims to give the petitioner another chance to course-correct, reform, and reintegrate into the community as an ideal citizen. To ensure that the petitioner also abides by the assurance made on the petitioner's behalf by not repeating the offence or indulging in any crime, it shall be desirable to impose the following additional condition.

**28. This bail is conditional, with the foundational condition being that if the petitioner repeats the offense where the quantity involved is more than half of the intermediate, or commercial, or violates S. 19, 24, or 27-A of the NDPS Act, or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, the State shall file an application to revoke this bail before the Special Judge/ Sessions Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and as per their discretion, they may cancel this bail.**

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

30. In Amit Rana v. State of Haryana, CRM-18469-2025 [in CRA-D-123-2020, decided on 05.08.2025], a Division Bench of Punjab and Haryana High Court in paragraph 13, holds that "To ensure that every person in judicial custody who has been granted bail or whose sentence has been suspended gets back their liberty without any delay, it is appropriate that whenever the bail order or the orders of suspension of sentence are not immediately sent by the Registry, computer systems, or Public Prosecutor, then in such a situation, to facilitate the immediate restoration of the liberty granted by any Court, the downloaded copies of all such orders, subject to verification, must be accepted by the Court before whom the bail bonds are furnished."

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31. **Petition allowed** in terms mentioned above. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)  
JUDGE

26.08.2025  
Jyoti Sharma

Whether speaking/reasoned: Yes  
Whether reportable: No.