

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15399-2025
Reserved on: 01.04.2025
Pronounced on: 08.04.2025

Gurwaha Malhar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Namit Khurana, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
25	28.01.2025	Rai, Distt. Sonipat	18(C) and 29 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. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts and allegations are taken from the reply filed by the State. On 27.01.2025, based on secret information, the Police seized 470 grams of opium from the co-accused's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNS, 2023. During the custodial interrogation of the co-accused Rakesh @ Keshi, he disclosed that on 22/23.01.2025 he had transferred Rs.75,000/- in the bank account of the petitioner through UPI transaction ID No.538801450836 on the asking of Abhishek for supply of 750 grams Afim, thereafter, Sunny had brought 750 grams Afim from Abhishek on 26.01.2025 and handed over the same to co-accused (Rakesh); based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.

4. The petitioner's counsel submits that the petitioner has been falsely implicated in the present case; initially there is no name in the FIR; his name has been surfaced on the basis of disclosure statement of co-accused. He further submits that there is no recovery of alleged contraband from the petitioner and no substantial evidence against the

petitioner.

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 his family.

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

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

"7. That it is submitted that there is sufficient evidence against petitioner to have committed the above mentioned offence. He had actively participated in the commission of above mentioned offence. Petitioner Gurwaha Malhar was friend of owner of Amritsar Punjab Dhaba, Ranchi, Jharkhand namely Abhishek, who used to sell Afim at his Dhaba and instead of his Dhaba, Abhishek used to store Afim with petitioner/accused Gurwaha Malhar. On 22.01.2025, Abhishek got transferred Rs.75,000/- in bank account of petitioner from account No.467800170xxxxxx of accused Rakesh, which is also explicit from the account statement of accused Rakesh @ Keshi. On receipt of said amount, as per instructions of Abhishek, petitioner had supplied 750 grams of Afim at the Dhaba of Abhishek. Petitioner had also retained Rs.15,000/- out of said amount of Rs.75,000/- as his share. All these facts have also been admitted by petitioner in his disclosure statement. In this manner, petitioner had actively participated in the commission of offence with his friend Abhishek. It is pertinent to mention here that such kind of offences have direct impact on society and sale of narcotic substance is deterrent to society and also going to spoil the generation. If enlarged on bail, he can hamper the trial by absconding from the process of law and can also indulge in similar offence. Petitioner is involved in a serious offence and merely on the basis of longevity of incarceration, petitioner is not entitled to seek the concession of bail as a matter of right. Thus, keeping in view the seriousness of offence and facts and circumstances of the case, he is not entitled to the relief of bail as claimed for."

REASONING:

8. Given the quantity the rigors of S. 37 of the NDPS Act do not apply in the present case.

9. 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.

10. 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.

11. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, as per paragraph 10 of the bail petition, the petitioner has been in custody since 03.02.2025. As per the custody certificate dated 28.03.2025, the petitioner's total custody in this FIR is 01 month and 26 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

12. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

13. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail.

CONDITIONS:

14. 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.

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

15. 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)	

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

17. 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.

18. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice can be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal v. State* (NCT of Delhi), 2020:INSC:106 [Para 92], (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

19. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection squad 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. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation**

of this bail before the Sessions Court, which shall have the liberty to cancel this bail.

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

22. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

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

(ANOOP CHITKARA)
JUDGE

08.04.2025

Jyoti-II

Whether speaking/reasoned: Yes

Whether reportable: No.