



CRM-M-25075-2025

-1-

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

**CRM-M-25075-2025
Date of decision: 19.05.2025**

LAKHWINDER KUMAR**...PETITIONER****VERSUS****STATE OF PUNJAB****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA**

Present: Mr. Amrit Paul Nahar, Advocate for
Mr. Munish Puri, Advocate for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J. (ORAL)

FIR No.	Dated	Police Station	Sections
024	05.03.2025	Division No.2, Pathankot	21(b) of NDPS Act, Section 29 of NDPS Act, 111 of BNS Act, 2023 added later on

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 11 of the bail application and the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	173	19.09.2022	21/22 of NDPS Act	Division No.2, Pathankot
2.	31	21.02.2023	21 of NDPS Act	Division No.2, Pathankot

3. The facts and allegations are taken from the reply filed by the State. On 05.03.2025, based on chance recovery, the Police seized 16 grams of heroin recovered from a transparent polythene bag which was carried by Sujal, co-accused. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023. During the custodial interrogation of the accused Sujal, he disclosed that the contraband which was recovered in the instant case was purchased by him from the petitioner; based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.

4. Counsel for the petitioner submits that petitioner has been falsely implicated in the



present FIR and nothing has been recovered from him. Petitioner has approached the trial Court for grant of regular bail but the same was dismissed by the Judge Special Court, Pathankot on 01.05.2025. He further prays for bail by imposing any stringent conditions in case, he repeats the offence or commit any offence, he would have no objection, if State files an application for cancellation of his bail. He further contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

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

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

"xxx xxx xxx xxx

ROLE OF THE PETITIONER

10. That the petitioner was arraigned as an accused in the instant case on the basis of a disclosure statement suffered by accused Sujal wherein he disclosed that 16 grams of heroin which was recovered in the instant case was purchased by him from the petitioner. The petitioner was arrested on 28.04.2025 but nothing was recovered from him. It is respectfully submitted that the instant case is still under investigation."

REASONING:

7. No recovery has been effected from the petitioner and his name cropped up in disclosure statement of the main accused. Contraband was recovered from the co-accused and there is no ground to deny bail.

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.

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



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. Per the custody certificate dated 17.05.2025, the petitioner's total custody in this FIR is 19 days only. 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. This order shall come into force from the time it is uploaded on the official webpage of this Court.

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.

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. 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.

19. *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.*

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

21. 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.

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

19.05.2025
renubala

(ANOOP CHITKARA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No