

CRM-M-45692-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-45692-2025  
Reserved on: 10.09.2025  
Pronounced on: 30.09.2025

Deepak Kumar @ Deepu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Munish Puri, Advocate  
for the petitioner.

Mr. Jatin Kundu, AAG, Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
55	25.05.2025	Sadar Pathankot, District Pathankot	21, 27(a)-61-85 of NDPS Act (Sections 29-61-85 of NDPS Act and 111 BNS added later on) (wrongly mentioned as BNSS in the prayer clause)

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 paragraphs 14 & 15 of the bail petition and the reply/custody certificate, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	56	26.05.2025	21, 22, 27(a)-61-85 of NDPS Act (Sections 29-61-85 of NDPS Act and 111 BNS added later on vide DDR no.13 dated 27.05.2025)	Sadar Pathankot
2	57	27.05.2025	21, 22-61-85 of NDPS Act (Section 29-61-85 of NDPS Act was added later on vide DDR no.10 dated 29.05.2025)	Sadar Pathankot

3. The facts and allegations are taken from the reply filed by the State. On 25-05-2025, based on chance recovery, the Police seized 15.40 gram heroin from co-accused Seeta Ram @ Sunil. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS 2023. During the custodial interrogation

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of the accused Seeta Ram @ Sunil disclosed the petitioner as the supplier of the drugs; 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 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. Counsel further 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 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.

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

**REASONING:**

7. As per paragraph 5 of the reply, the contraband is 15.40 grams of heroin.

8. Dealing in 15.40 grams of heroin in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	15.4 Gram
Punishable U/s	S.21(b) of NDPS Act, 1985
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	6.16%

Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)

<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
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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

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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>

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9. Quantity involved in this case is non-commercial. 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 law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal.<sup>1</sup>In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial.—Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? —Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? —Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.<sup>2</sup> Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.<sup>3</sup> Personal liberty deprived when bail is refused, is too precious a value of our constitutional system recognised under Art. 21 that the curial power to negate it is a great trust exercisable, not casually, but judicially with lively concern for the cost to the individual and the community.<sup>4</sup> When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated.<sup>5</sup>

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

***“D. The evidence against the petitioner:-***

*(i) That co-accused Shiv Ram @Mandeep was arrested on 26.05.2025 and*

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<sup>1</sup> Supreme Court of India in Vaman Narain Ghiya v. state of Rajasthan, [E-SCR] ; [2008] 17 SCR 369, Para 16, decided on 12.12.2008.

<sup>2</sup>Supreme Court of India in State of Kerala v. Raneef, SC 2J [E-SCR]; [2011] 1 SCR 590, Para 4, decided on 03.01.2011.

<sup>3</sup> Supreme Court of India in Siddharam Satlingappa Mhetre v. State of Maharashtra, SC 2J [E-SCR], Paragraph 127, decided on 02.12.2010.

<sup>4</sup> Supreme Court of India in *Babu Singh & ors v. State of UP*, [E-SCR] P. 777, decided on 31.01.1978.

<sup>5</sup> Supreme Court of India in Sanjay Chandra v. CBI , [2011] 13 (ADDL.) S.C.R. 309, Para 26, [E-SCR], decided on 23.11.2011.

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*the petitioner Deepak Kumar @Deepu was arrested on 02.06.2025. On 26.05.2025, the co-accused Shiv Ram @ Mandeep suffered a disclosure statement that on dated 25.05.2025 he had taken 10 grams Heroin from the co-accused namely Seeta Ram @Sunil and he was to make the payment to him (Seeta Ram).*

*(ii) On 02.06.2025, the petitioner Deepak Kumar @Deepu also suffered a disclosure statement that on 25.05.2025, he had purchased 25 grams Heroin from one unknown person, who was muffled face and he had sold the same to the co-accused namely Seeta Ram @ Sunil. On 27.05.2025, he had purchased 20 grams Heroin from one unknown person from Chhani Beli Himachal Pradesh, who was muffled face and was going for the search of customers from his village Mohtali (Majra) H.P. to Nousehra Nalbanda District Pathankot (Punjab).*

***E. The role of the petitioner :-***

*That the co-accused Seeta Ram@ Sunil had purchased 25 grams Heroin (recovered from him) from the petitioner Deepak Kumar son of Bittu, resident of Majra, District Kangra (H.P.) and out of said 25 grams Heroin, co-accused Seeta Ram@ Sunil has sold 10 grams Heroin to his neighbourer namely Shiv Ram @ Mandeep (co-accused) son of Dalip Chand, resident of Majra, District Kangra (H.P.).*

*As per the investigation till date, the petitioner is found to be the member of Drug Nexus who used to smuggle the Heroin in/ around the border area of Punjab & Himachal Pradesh. Further two more FIRs i.e. (i) FIR No.56 of 26.05.2025, under section 21,22,27(A)-61-85 NDPS Act (section 29-61-85 NDPS Act and section 111 BNS was added later on vide DDR No. 13 dated 27.05.2025), Police Station Sadar Pathankot and (ii) FIR No.57 dated 27.05.2025, under section 21,22-61-85 of NDPS Act (section 29-61-85 NDPS Act was added later on vide DDR No. 10 dated 29.05.2025), Police Station-Sadar Pathankot, have already been registered against the co-accused namely Seeta Ram @ Sunil and the present petitioner namely Deepak Kumar @ Deepu and same shows that the petitioner is continuing in committing the similar offences.”*

12. Per the custody certificate dated 09.09.2025, petitioner’s custody in this FIR is of 03 months & 27 days.

13. Thus, the evidence collected so far consists of disclosure statements. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of the BSA, 2023.

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14. In *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

15. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband. No other evidence is collected at this stage to connect the petitioner with the main accused.

16. 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.

17. The evidence collected might be, prima facie, sufficient to launch prosecution or even to frame the charges; however, it is insufficient for bail.

18. Given the penal provisions invoked, the legal admissibility of evidence collected against the petitioner, 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, subject to compliance with the terms and conditions mentioned in this order.

19. Without commenting on the case's merits, in the facts and circumstances unique and 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 this Court's official webpage.

CONDITIONS:

20. Given the 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, with or without sureties, with a maximum bond amount not to exceed INR 10,000.

21. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, the surety is capable of producing the accused. However, instead of surety, the petitioner may provide a fixed deposit of INR 10,000/-, with a clause that

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the interest shall not be accumulated in FD, either drawn from a State-owned bank or any bank listed on the National Stock Exchange and/or Bombay Stock Exchange, in favour of the “Chief Judicial Magistrate” of the concerned Sessions Division; or a fixed deposit made in the name of the petitioner, with similar terms and with endorsement from the banker stating that the FD shall not be encumbered or redeemed without the permission of the concerned trial Court, or until the surety bond has been discharged.

22. 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)	

23. This order is subject to the petitioner’s complying with the following terms.

24. 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.

25. 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.

26. 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

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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."

27. 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."

28. 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.

29. 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 concerned 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.

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

31. It is clarified that this bail order shall not be considered as a blanket bail order in any other matter and is only limited to granting bail in the FIR mentioned above.

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

(ANOOP CHITKARA)  
JUDGE

30.09.2025  
anju rani

Whether speaking/reasoned: Yes  
Whether reportable: No.