

CRM-M-54968-2024

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

CRM-M-54968-2024  
Reserved on: 15.01.2025  
Pronounced on: 24.01.2025

Pawan Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Goldy Jakhar, Advocate  
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

\*\*\*\*

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
98	12.09.2024	City-2, Abohar, District Fazilka	18 & 29 of NDPS Act and 212(a) of BNS

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 20 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, which reads as follows:

*“3. The FIR in question was registered against two accused namely (i) Pawan Kumar son of Sahab Ram (present petitioner) and (2) Raj Karan son of Hari Ram, on the basis of recovery of contraband (i.e. 803 gms. Opium). Brief facts of the case are that on 12.09.2024, when the police party headed by SI Milkh Raj while going in Govt. vehicle No. PB-22R-0870 Bolero, towards the bypass through road alongside railway line and Pancham Vihar colony from Sitto Gunno railway crossing, for patrolling purposes and checking suspicious persons, reached behind 150 metres from Bypass, then two young persons were seen coming on motor cycle from the side of bypass. On seeing the police, the said persons became nervous and the driver of the motor cycle tried to turn back the*

CRM-M-54968-2024

*motor cycle, but the motor cycle slipped on the ground. The pillion rider was holding one cloth envelope (containing something) in his right hand. On suspicion, SI Milkh Raj with the help of fellow officials apprehended the said persons and asked them their names and addresses separately. The driver of the motor cycle told his name as Pawan Kumar son of Sahab Ram resident of Village Kera Khera and the pillion rider told his name as Karan Kumar son of Ram Lal resident of Village Kera Khera. SI Milkh Raj suspected some intoxicating articles in the envelope in the possession of the said persons. Efforts were made to join the independent witness but nobody was available. During checking the cloth envelope, 803 gms opium was recovered from the accused. While following the proper procedure, the recovered articles and the offending vehicle were taken into the police custody.*

*(ii). During the investigation, it was found that Rameshwar Lal son of Mani Ram had purchased the offending motor cycle and he had sold the same to the petitioner-accused. At the time of occurrence, the offending motor cycle belonged to the petitioner-accused.*

*(iii). When the police apprehended the accused, the petitioner-accused had told his name as Karan Kumar son of Ram Lal, whereas his real name is Raj Karan son of Hari Chand. So, the offence u/s 212(a) of BNS, 2023 was added in the FIR in question vide DDR No. 36 dated 12.09.2024.*

*(iv). The accused used fake number plate on the offending motor cycle, so the offence u/s 341(2) of BNS, 2023 was added in the FIR in question vide DDR No. 29 dated 01.10.2024.”*

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

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

7. Dealing in 803 grams of opium is a punishable offense under the NDPS Act in the following terms:

Substance Name	"Opium"
Quantity detained	803 Gram
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	32.12%

*Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985*

CRM-M-54968-2024

Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	92
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Opium
Other non-proprietary name	*****
Chemical Name	And any preparation containing opium
Small Quantity	25 Gram
Commercial Quantity	2500 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.18 & S.2(xv) NDPS Act, S.O.821(E)
dated	11/14/1985
Sr. No.	S.2(xv)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	<p>S.2(xv) "opium" means—  (a) the coagulated juice of the opium poppy; and  (b) any mixture, with or without any neutral material,  of the coagulated juice of the opium poppy,  but does not include any preparation containing not  more than 0.2 per cent. of morphine; S.2 (xvii)  "opium poppy" means—  (a) the plant of the species <i>Papaver somniferum</i> L;  and  (b) the plant of any other species of <i>Papaver</i> from  which opium or any phenanthrene alkaloid can be  extracted and which the Central Government may, by  notification in the Official Gazette, declare to be  opium poppy for the purposes of this Act;</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</p>

	percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.
--	---

8. Given this, 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 Act<sup>1</sup>.

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, per paragraph 5 of the bail petition, the petitioner has been in custody since 12.09.2024. As per the custody certificate dated 14.12.2024, the petitioner's total custody in this FIR is 02 months & 28 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 further pre-trial incarceration at this stage.

12. 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.

13. 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

---

<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

CRM-M-54968-2024

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.

14. 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)	

15. 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.

16. 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.

17. 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.

18. This bail is conditional, and the foundational condition is that if the petitioner repeats the offense, the State may file an application for cancellation of this bail before

CRM-M-54968-2024

the Sessions Court, which shall be at liberty to cancel this bail.

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

20. 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.

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

(ANOOP CHITKARA)  
JUDGE

24.01.2025  
anju rani

Whether speaking/reasoned: Yes  
Whether reportable: No.