

CRM-M-49139-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49139-2025
Reserved on: 01.10.2025
Pronounced on: 16.10.2025

Rahul Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.P.S. Pathania, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
20	17.06.2025	Nangal, Bhoor, District Pathankot	21, 27(a)-61-85 of NDPS Act and 111 BNS 2023 (Sections 25-54-59 of Arms Act and 29-61-85 of NDPS act added later on vide Rapat No.22 dated 18.06.2025)

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 16 of the bail petition and para 9 E of the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	94	11.07.2024	190, 191(3), 194(2), 109, 115(2) of BNS 2023	Division No.2, Pathankot
2	38	18.03.2025	21(b), 27(a), 29-61-85 of NDPS act and Section 111 of BNS added later on	Division No.2, Pathankot
3	33	14.03.2025	21(b), 27(a), 29-61-85 of NDPS act	Division No.2, Pathankot
4	33	2023	---	Division No.2, Pathankot
5	74	09.05.2022	148, 149, 307, 323, 324 IPC	Division No.2, Pathankot
6	132	2023	---	Division No.2, Pathankot

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				Pathankot
7	57	20.04.2023	148, 149, 324, 326 IPC	Division No.2, Pathankot

3. The facts and allegations are taken from the reply filed by the State. Based on chance recovery, the police recovered heroin from three persons including the present petitioner. Paragraph 5 of the reply reads as follows:

“5(i) That on 17.06.2025, Davinder Singh, ASI along with ASI Gurmeet Singh 1829/ASR-City, ASI Prabhat Singh 607/ PTK, PHG Keshav Balotra 25500 in private vehicles with laptop, printer and investigation kit, for the purpose of patrolling and in search of bad persons were present at service road, railway colony Meerthal near National Highway and were conducting the checking of vehicle coming from Mukerian.

ii) Then at 04:50 AM one vehicle Mahindra Bolero bearing number PB-07-BD-8614 color white in which three clean shaved youngmen were seated, Davinder Singh, ASI with the light of torch has indicated to stop. Then the driver of vehicle has attempted to fled away the vehicle from the barricading. At this Davinder Singh, ASI with the help of co-officials have nabbed the vehicle and asked 3 youngmen to come down of vehicle.

iii) Then the youngman who was driving the vehicle, on just coming down of vehicle has thrown in bushes at the roadside one transparent weighted polythene pouch from right hand side pocket of his half pant which he was wearing. Then the youngman who was seated on left side of the driver has thrown in bushes at the roadside one transparent weighted polythene pouch from right hand side pocket of his half pant which he was wearing.

(iv) Then the youngman who was seated at the rear seat has thrown in bushes at the roadside one transparent weighted polythene pouch from right hand side pocket of his lower which he was wearing.

x x x x x

(vii) Then the transparent polythene pouch was weighed, which was thrown by Rahul Kumar alias Anda (petitioner) and it was found 30 Gram 79 Milligram Heroin with polythene pouch. The recovered Heroine were put into 3 separate small plastic containers and parcels of the same were prepared. After conducting the personal search of above mentioned Vikrant alias Vicky from the left hand side pocket of lower which he was wearing, one mobile phone mark Samsung color silver and drug money of 1040/- of Indian currency was recovered and after conducting the personal search of above mentioned Ashmeet Singh alias Billi, from the left hand side pocket of half-pant which he was wearing one mobile phone mark Redmi 50 color purple and drug money of 970/- of Indian Currency and after conducting the personal search of Rahul Kumar alias Anda, from the left hand side pocket of half-pant which he was wearing one mobile phone mark Oppo color purple and drug money of 1520/ of Indian Currency, were recovered. The vehicle Mahindra Bolero bearing number PB-07-BD-8614 color white was taken into police.”

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and the BNSS, 2023.

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5. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody.
6. 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.
7. The State's counsel opposes bail and refers to the reply.

REASONING:

8. It shall be relevant to refer to paragraph 9 of the reply, which read as follows:

“9. That in compliance of the order dated 09.09.2025 passed by this Hon'ble High Court, the details under the heading are as follows:-

 - A. The name and total weight of the drug: That Heroine weighing 30 gms & 79 mg was recovered. Additionally, one mobile phone. Indian Currency Rs. 1520 was recovered during arrest One Pistol 9 MM (Auto Pistol made in USA) including one live Cartridge 9 MM and Rs.65000 drug money was recovered on disclosure statement.*
 - B. The Evidence based on which the petitioner was arraigned as an accused: That Rahul Kumar Alias Anda (Petitioner) was found possessing Drug Heroine weighing 30 gms & 79 mg. therefore has committed offence U/s 21-27(1)-61-85 of NDPS Act at the time of arrest.*
 - C. The Evidence against the Petitioner: That the Petitioner on seeing the Police Party when stopped on just coming down of vehicle threw in bushes at the roadside one transparent weighted polythene pouch from right hand side pocket of his half pant which he was wearing and after taking the polythene from bushes when it was opened & weighed, which was thrown by Rahul Kumar alias Anda (Petitioner) and it was found 30 Gram 79 Milligram Heroin with polythene pouch.*
 - D. The Role of the Petitioner: That the petitioner is involved in the business of sale, purchase of illegal drug trade and was carrying 30 gms & 79 mg. One Pistol 9 MM (Auto Pistol made in USA) including one live Cartridge 9 MM and Rs.65000 drug money was recovered on his disclosure statement.”*
9. As per paragraph 9 A of the reply, the contraband is 30.79 grams of heroin.
10. Dealing in 30.79 grams of heroin in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

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Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	30.79 Gram
Punishable U/s	S.21(b) of NDPS Act, 1985
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	12.32%

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 & Commercial in S.2(viia) & 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	

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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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11. The quantity allegedly involved in this case is not commercial. Given this, the rigours of S. 37 of the NDPS Act do not apply in the present case. 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 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, which specify an offence, also 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 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.

12. S. 27A of the NDPS Act reads as follows:

27A. Punishment for financing illicit traffic and harbouring offenders.—Whoever indulges in financing, directly or indirectly, any, of the activities specified in sub-clauses (i) to (v) of 3[clause (viii**b**) of section 2] or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

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13. At the stage of invocation of S. 27A, there was no prima facie evidence of financing, directly or indirectly. Thus, the rigors of S. 37 of the NDPS Act shall also not attract.

14. When the restrictions of Section 37 of the NDPS Act do not attract, the factors for bail become similar to the offence regular statutes.

15. Per the custody certificate dated 30.09.2025 the petitioner's custody in this FIR is of 03 months & 10 days.

16. 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.¹ 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.² 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.³ 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.⁴ When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated.⁵

CONDITIONS:

17. 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 25,000.

¹ 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.

² 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.

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

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

⁵ 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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18. 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 25,000/-, with a clause that 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.

19. 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)

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

21. 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.

22. 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 society; it would also restrain the accused from influencing the witnesses and repeating the offense.

23. The conditions mentioned above imposed by this court are to endeavor to reform

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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."

24. In Md. Tajiur 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."

25. 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.

26. 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.

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

28. 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.

29. 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

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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.”

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

(ANOOP CHITKARA)
JUDGE

16.10.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.