

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3188-2025
Reserved on: 06.03.2025
Pronounced on: 18.03.2025

Gayan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Manoj Singh Gujral, Advocate,
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
105	09.09.2024	IT City, Distt. SAS Nagar	20 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 22 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 09.09.2024, based on chance recovery, the Police seized 19 kg 900 grams Ganja from the possession of co-accused Dinesh Kumar, who was sitting on the back seat of the auto and the petitioner was the driver of said auto. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.

4. The petitioner's counsel submits that the co-accused Dinesh Kumar from whose possession the ganja was recovered, has been granted bail by this Court, vide order dated 20.02.2025 passed in CRM-M-3352-2025.

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:

“5. That as far as role of the Petitioner is concerned, it is submitted here that the Petitioner was the owner and driver of the offending vehicle bearing no. No.PB-65AW-2156, in which both the aforesaid accused had knowingly brought narcotic and psychotropic substance i.e. Ganja, weighing 19 kg and 900 grams from Ambala. Both the accused belonged to same vicinity and they had illegally bought and possessed Ganja. The petitioner and his co-accused had failed to produce any permit or licence for possessing the aforementioned narcotic substance, hence they were arrested on the spot. As the recovery of narcotic substance has been made from the plastic bag kept in the aforesaid Auto as mentioned above and not from the personal search of the Petitioner, hence the compliance of section 50 of NDPS Act was not resorted to at the spot. The forensic evidence in shape of the FSL report dated 25.10.2024 has come on record which shows that the samples taken from the recovered plastic bag by the concerned Magistrate, contain Ganja, which is a narcotic and psychotropic substance as per the NDPS Act. Thus, the petitioner was found in illegal possession of 19 kg and 900 grams of Ganja, which is non-commercial quantity as per Schedule to the NDPS Act.”

REASONING:

8. Since, the co-accused Dinesh Kumar from whose possession the ganja was recovered, has been granted the benefit of bail, as such, the petitioner is also entitled to bail on parity with the said co-accused.

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

10. 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.

11. 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.

12. 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 20 of the bail petition, the petitioner has been in custody since 09.09.2024. As per the custody certificate dated 05.03.2025, the petitioner's total custody in this FIR is five months and twenty one 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.

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.

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.

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

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 detection staff, 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.

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.

18.03.2025
Jyoti-II

(ANOOP CHITKARA)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: No.