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328 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43041-2025
Reserved on: 09-09-2025
Pronounced on: 12-09-2025

Akhil Sharma ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gursharan Singh, Advocate
for the petitioner.

Mr. Jatin Kundu, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
51	18.09.2024	Narot Jaimal Singh District Pathankot	3, 4 of Official Secrets Act, 10, 11, 12 of Aircraft Act, 21-27-A- 61-85 of NDPS Act and 303(2), 317(2), 345(3), 238 of BNS

1. The petitioner incarcerated in the FIR captioned above has again come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. Per paragraph 19 of the bail application, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	50	15.09.2024	303(2), 317(2), 345(3), 238 BNS	Narot Jaimal Singh

3. The prosecution's case and the investigation is mentioned in the reply dated 08.09.2025, which reads as follows:

*“A. The name and total weight of the drug:-
That 260 gram of Heroin was recovered from the petitioner Akhil Sharma @ Babla and further Drug Money of Rs. 2,18,000/- was also recovered from the co-accused Harjeet Singh @ Jeeta on the basis of disclosure statement made by the petitioner Akhil Sharma @Babla. In this case, first sample of drug recovered on the basis of disclosure*



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statement of petitioner was sent to RTFSL Amritsar vide Road Certificate No. 80/21/24 dated 24.09.2024 and examination report of said drug sample has been received from RTFSL Amritsar report vide 1360/2024/Toxi/RTFSL/ASR/Pb. dated 08.01.2025 which is attached as Annexure -R1 and the same is reproduced as under:

"The content of the parcel under reference has been analyzed by chemical, TLC and instrumental of analysis, analysis. basis Diacetylmorphine (Herion) couldn't be detected in of the parcel. However, Dextromethorphan & Acetaminophen (PCM) has been found present in the content of the parcel."

Therefore the Drug Control Officer Pathankot was requested to submit his opinion on the Examination Report of RTFSL Amritsar as stated above, who in his written report submitted that:

"As per test report no. 1360/2024/Toxi/RTFSL/ASR/Pb dated 08.01.2025 Dextromethorphan & Acetaminophen (PCM) has been found present in the parcel. The Salt Dextromethorphan & Acetaminophen (PCM) does not cover under NDPS Act 1985".

Thus in this case, the second sample of drug was sent to RTFSL Amritsar for comparison vide Road Certificate No. 31/21/25 dated 18.02.2025, and a similar report has been received from the RTFSL Amritsar vide test report no 187/2025/Tox/RTFSL/ASR/PD dated 10.06.2025, which is attached as Annexure- R2, and the same is reproduced as under:-

"The content of the parcel under reference has been analyzed by chemical, TLC and instrumental analysis. the basis analysis, Diacetylmorphine (Heroin) could not be detected. in the content of the parcel: However, Dextromethorphan & Acetaminophen (PCM) has been found present in the content of the parcel".

As Diacetylmorphine (Heroin) could not be detected in the recovered contraband, therefore, the section 21 of NDPS Act has been deleted vide Rapat No. 16 dated 13.03.2025.

B. The evidence based on which the petitioner was arraigned as an accused:-

That initially the petitioner Akhil Sharma @ Babla was arrested in FIR No. 50 dated 15.09.2024 under section 303(2), 317(2), 345(3), 238 of BNS 2023 registered by the Police Station Narot Jaimal Singh District Pathankot. During his custodial interrogation on 18.09.2024, he had made a disclosure statement that co-accused namely Sukhdeep Singh @Ghudda R/o Village Radiana, Police Station Kalanaur, District Gurdaspur (Punjab) is his friend and about 5-6 months back, Sukhdeep Singh @Ghudda had through Internet calling contacted him and asked him to send a letter (over here letter means 'Location'). Then Sukhdeep Singh @Ghudda further said him (Akhil Sharma @ Babla) that he will send Heroin Packets from Pakistan to the place/location which he will



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send him through Mobile and his boys will collect Heroin from him. About three months back, he had smuggled Heroin on three locations sent by Sukhdeep Singh @ Ghudda and 4th time due to high electric towers, the signal of Drones failed because of which delivery remained unsuccessful. The Heroin Packets were collected by Harjeet Singh @Jeeta S/o Gurmej Singh along with one unidentified person and who used to tears the packets from one side in which there was Heroin and he had no information/knowledge about the contents of second packet. They used to send the amount/ drug money in the account of Gaurav Sharma @Gopi R/o Pansar, Police Station Rajbagh, District Kathua (J&K) and he used to collect the amount as per his needs. About 14-15 days back, Balwinder Singh @Bhinda R/o Magarmudian, District Gurdaspur and Cheena R/o Taran Tarn, who were friends of Sukhdeep Singh @Ghudda came to him and took him to Village Bhagwal and they sent location to Sukhdeep Singh @Ghudda. Then about 11:00 pm (in night) on the said day, all three of them i.e. Petitioner & two others went to place of location where Drone arrived from Pakistan side, but due to dense cover of trees, the signal of Drone break down and the Drone returned back without dropping Heroin. That 6th time when Sukhdeep Singh @Ghudda sent the location of cremation ground of his village and asked him to provide some amount of Heroin to him (petitioner). Firstly Sukhdeep Singh @Ghudda refused but later on agreed to provide him some heroin out of the said consignment. Then 9-10 days prior, Sukhdeep Singh @Ghudda sent location of Cremation Ground adjoining to his village, then about 02:00 am (in night) the consignment of Heroin dropped by a Drone arrived from the Pakistan side, which were collected by two boys sent by Sukhdeep Singh @Ghudda, who came there on Splendor Motorcycle. The said 2 persons gave some Heroin to him (petitioner) and they went back on their motor cycle with the said Heroin. That petitioner Akhil Sharma @ Babla further disclosed that he had kept the Heroin in his fields. That on 18.09.2024, the said Heroin was recovered from the fields of Akhil Sharma @ Babla. Thereafter the present FIR No. 51 dated 18.09.2024 under section 3.4 of official secrets Act 1923, 10, 11.12 of Aircraft Act 1934, 21, 27-A of NDPS Act & 303(2), 317(2) of BNS was registered by the Police Station Narot Jaimal Singh against (i) Balwinder Singh @Bhinda, (ii) Akhil Sharma @ Babla (petitioner), (iii) Sukhdeep Singh @Ghudda, (iv) Harjeet Singh @Jeeta, (v) Gaurav Sharma @Gopi & (vi) Harchand Singh @Cheena. Vide Rapat No. 30 dated 20.09.2024, Lovepreet Singh @ Lovely & Sahil Saini were also nominated as co-accused in the present FIR.

C. The evidence against the petitioner:-

That on the basis of disclosure statement dated 18.09.2024 made by the petitioner Akhil Sharma @ Babla, 260 gram of drugs was recovered from the petitioner. Further the co-accused Harjeet Singh @Jeeta S/o Gurmej Singh was also arrested by the police along with Motor Cycle bearing Registration No. PB-18-Q-2785 (stolen vehicle, correct Registration No. is PB-06-AL-6397) involved in crime/present FIR on the basis of disclosure statement made by the petitioner Akhil Sharma



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@Babla. Furthermore, on the disclosure statement made by the co-accused Harjeet Singh @Jeeta, 255 gram of Heroin and Drug Money of Rs. 2,18,000/- (Rs. 15,000/- + Rs. 2,03,000/-) was also recovered from the co-accused Harjeet Singh @Jeeta and in this regard an another FIR No. 53 dated 24.09.2024 under section 21 of NDPS Act was registered by the Police Station Narot Jaimal Singh District Pathankot against the co-accused Harjeet Singh @Jeeta.

That during the interrogation of the co-accused namely Balwinder Singh @Binda, he was asked to provide all his mobile numbers, which was/is being operated by him. The co-accused Balwinder Singh @Binda replied that he has operated only two mobiles numbers i.e. 73475-34413 & 73407-67302 till date. As per the Call details of the mobile no. 73475-34413 of Balwinder Singh @Binda, it is found that about 14-15 days prior to the arrest of the petitioner Akhil Sharma @ Babla, the co-accused Balwinder Singh @Bhinda contacted with the co-accused Cheena, Sukhdeep Singh @Ghudda & Akhil Sharma @ Babla (petitioner) through WhatsApp Calls and exchanged Locations between them where Drone arrived from Pakistan side for dropping the consignment of Heroin. Later on the said Heroin was recovered from the fields of Akhil Sharma @ Babla on 18.09.2024. It is worth mentioning here that WhatsApp calls are end-to-end encrypted, which means that only the caller and recipient can read or hear them. This includes voice messages, photos, videos, and status updates. Therefore the Call details of WhatsApp calls can only be retrieved from the mobile devices from where WhatsApp Call is dialed or received.

Further the co-accused Balwinder Singh @Binda was asked about the whereabouts of the mobile phones in which the said Mobile SIM were used by him. The co-accused Balwinder Singh @Binda replied that he had used the said SIM in "Apple iPhone 11" & "Oppo F9 Pro", but now he had throw the "Apple iPhone 11" and he has further given the "Oppo F9 Pro" mobile to some other person about whom he does not know anything. However about 14-15 days prior to the arrest of petitioner Akhil Sharma @ Babla, the Location of mobile number 73475-34413 of co-accused Balwinder Singh @Binda was found to be at Village Bhagwal and surrounding Border areas.

That the mobile phones of Akhil Sharma @ Babla & Harjeet Singh @Jeeta was sent to Forensic Lab for further Examination, the examination report of which has been received from Forensic Lab, and the same has been attaché with Challan as per section 193(9) of BNSS.

D. The role of the petitioner:-

That as per the investigation till date, the petitioner is found to be the member of Drug Nexus who smuggled the Heroin from the Pakistan by using Drones and their links are connected with District Gurdaspur, Batala, Amritsar, Taran Tarn, Jammu & Kashmir etc. Further the raids are being conducted to arrest remaining accused persons in the present FIR in order to enquire about their Role."

4. Earlier this Court had dismissed the petitioner's bail because of the commercial quantity of heroin smuggled from across the border. At that time, the FSL report was not



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made available, and now the FSL report has come, which reads as follows:

“9. *Identification & Tests:*

<i>Dextromethorphan</i>	:	<i>Found present in the content of the parcel.</i>
<i>Acetaminophen (PCM)</i>	:	<i>Found present in the content of the parcel.</i>

5. In the reply dated 08.09.2025, there is no reference to any notification to substantiate that any of these two chemicals are prohibited under the NDPS Act, 1985.

6. The State’s Counsel could not point out to any notifications issued under the NDPS Act to demonstrate “Dextromethorphan” and “Acetaminophen (PCM)” as prohibited drugs or psychotropic substances.

7. Furthermore, I have also checked “Dextromethorphan” and “Acetaminophen (PCM)” on my unpublished personal scientific tool and its database, which do not indicate “Dextromethorphan” and “Acetaminophen (PCM)” as prohibited drugs or psychotropic substances.

8. The other evidence is the recovery of drug money from the co-accused; however, when the investigator has not mentioned the chemical as a prohibited substance under the NDPS Act, the money cannot be termed as drug money.

9. Despite all this, per the custody certificate dated 08.09.2025, the petitioner's custody in this FIR is 11 months and 12 days.

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.¹In 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

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.

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



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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

11. Notwithstanding anything stated above, if subsequently it is shown to the Trial Court/Judicial Magistrate that the substance tested in the laboratory, was a prohibited substance under the NDPS Act, on the date of its seizure, then this present order granting bail on the ground that the substance did not fall in the definition, shall eclipse. Consequently, the petitioner shall be informed and supplied with a copy of the notifications and shall be granted 7 days to surrender before the Police or the concerned Court, and on failure, steps be taken for his arrest, in accordance with the law.

12. Subject to 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.

13. 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.

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)

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

16. 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.”

17. Whether “Dextromethorphan” is an intoxicating substance or not is subject to the decision of the Central Government. However, transportation of “Dextromethorphan” raises an eyebrow that why would “Dextromethorphan” be smuggled through Drones, from across the border, because prima facie, “Dextromethorphan” is not in the list of prohibited substance under NDPS Act, 1985. Therefore, in the National Interest, the Superintendent of Police, Pathankot, to send a copy of this order to Secretary Home, Government of India for bringing to their notice about the seizure of “Dextromethorphan”.

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

(ANOOP CHITKARA)
JUDGE

12.09.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: YES.