

CRM-M-11859-2025

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

CRM-M-11859-2025
Reserved on: 02.04.2025
Pronounced on: 21.04.2025

Joginder @ Joga ...Petitioner

Versus

State of Haryana ...Respondent

CRM-M-9028-2025

Rajesh @ Raje ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Lalit Kumar Narang, Advocate
for the petitioner (in CRM-M-11859-2025).

Mr. Gaurav Arora, Advocate and
Mr. Yashpal Thakur, Advocate
for the petitioner (in CRM-M-9028-2025)

Mr. Naveen K. Sheoran, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
135	30.03.2023	Sampla, District Rohtak	21/60 of NDPS Act and 485 IPC

1. The petitioners 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 14 of the bail application (CRM-M-11859-2025) and paragraph 7 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	826	17.11.2020	20 of NDPS Act	City, Rohtak
2.	869	14.12.2021	21 of NDPS Act	City, Rohtak
3	201	11.03.2023	21/29 of NDPS Act	City, Rohtak
4	135	30.03.2023	21/60 of NDPS Act	Sampla
5	322	01.06.2018	20 of NDPS Act	City, Rohtak

3. Per Note II of the bail application (CRM-M-9028-2025) and paragraph 7 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	232	2019	406/420/467/468/471 IPC	Lakhan Majra
2.	124	2022	21 of NDPS Act	City Rohtak
3.	487	2019	406/420/467/468/471 IPC	Shivaji Colony, Rohtak
4.	90	2020	334 IPC	Shivaji Colony, Rohtak
5.	9	2020	21/27(a)/29 of NDPS Act and 188 IPC	IMT, Rohtak
6.	291	2022	379/411 IPC	Arya Nagar, Rohtak
7.	21	2020	21 of NDPS Act	Urban Estate, Rohtak

4. The facts and allegations are taken from the status report filed by the State. On 30.03.2023, based on secret information, the Police seized 250 grams of Heroin each from possession of the petitioners. 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 petitioners and their family. Petitioner's counsel on instructions further submits that petitioners shall not indulge themselves in the offence involving the commercial or intermediate quantity or the offence which falls under Sections 19/24/27-A of NDPS Act. Petitioner's counsel further submits that if the petitioners involve themselves in the said offences, they have no objection if the State files an application for cancellation of bail in all FIRs under NDPS Act pending against the petitioners.

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

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

8. 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.

9. 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.

10. 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. Per the custody certificate dated 01.04.2025 filed in CRM-M-11859-2025, the petitioner's total custody in this FIR is 01 year, 11 months and 24 days and per custody certificate dated 13.03.2025 filed in CRM-M-9028-2025, the petitioner's custody in this FIR is 01 year, 11 months and 12 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 for further pre-trial incarceration at this stage.

11. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

12. Given above, provided the petitioners are 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.

13. While furnishing a personal bond, the petitioners 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)	

14. This order is subject to the petitioner's complying with the following terms.

15. The petitioners shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioners 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

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

Court.

16. Given the background of allegations against the petitioners, 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 petitioners 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 petitioners 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.

17. 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 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."

18. 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 petitioners are found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioners are bound to face the necessary consequences."

19. **This bail is conditional, and the foundational condition is that if the petitioners indulge in any non-bailable offense, the State shall file an application for cancellation of this bail before the Trial Court, which shall be at liberty to cancel this bail.**

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

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21. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioners 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.

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

(ANOOP CHITKARA)
JUDGE

21.04.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.