

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27397-2025
Reserved on: 03.07.2025
Pronounced on: 31.07.2025

Mohit Lohan @ Golu

...Petitioner

Versus

U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhishek Joon, Advocate,
for the petitioner.

Mr. Manish Bansal, P.P., UT Chandigarh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
15	09.11.2024	Sector-ANTF, Chandigarh	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. As per para 10 of the bail petition and as per para 7 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated/Year	Offenses	Police Station
1.	287	2021	279/304-A IPC	Uchana, Narwana
2.	340	02.07.2022	148, 149, 307, 323, 325, 326, 506 IPC	Narnaund
3.	181	2020	188 IPC	Narnaund
4.	652	09.12.2022	323, 325, 34, 452 IPC	Narnaund
5.	597	29.02.2021	147, 149, 323, 427, 447, 452, 506 IPC	Narnaund
6.	72	21.02.2021	147, 149, 323, 506 IPC	Narnaund, Distt. Hisar
7.	69	17.02.2023	323, 506, 34 IPC	Narnaund, Distt. Hisar
8.	257	09.07.2021	457, 380 IPC	Narnaund, Distt. Hisar

3. The facts and allegations are taken from the status report filed by the State. On 09.11.2024, based on secret information, the Police seized 1 kg of charas from the petitioner's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. The petitioner seeks bail on the grounds of custody of around eight months. 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.

5. The petitioner's counsel 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.

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

7. It would be appropriate to refer to the following portions of the status report, which reads as follows:

“Role of the petitioner:

6. That a recovery of 1 kg charas was effected from the present petitioner. Further, on the disclosure statement of co-accused Vikram the supplier of drugs Gopal Prasad Shresth was also arrested from his residence and a recovery of 19.09 grams charas was effected from him.”

REASONING:

8. As per para 6 of status report, the weight and name of drug is 1 kg Charas.

9. Dealing with this contraband is an offence under the following provisions and notifications:

Substance Name	Cannabis and cannabis resin/ Charas/ Hashish/ Sulpha
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<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
<i>Notification No. & date</i>	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)

<i>Specified as small & Commercial in S.2(viia) & 2(xviii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
Sr. No.	23	

Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Cannabis and cannabis resin
Other non-proprietary name	CHARAS, HASHISH
Chemical Name	EXTRACTS and TINCTURES OF CANNABIS
Small Quantity	< 100 Gram
Commercial Quantity	> 1000 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.20 & S.2(iii) NDPS Act, S.O.821(E)	11/14/1985

Sr. No.	S.2(iii)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	<p>S.2(iii) “cannabis (hemp)” means—</p> <p>(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;</p> <p>(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and</p> <p>(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;</p> <p>(iv) “cannabis plant” means any plant of the genus cannabis; S. 2(viii b)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means—</p> <p>(i) cultivating any coca plant or gathering any portion of coca plant;</p> <p>(ii) cultivating the opium poppy or any cannabis plant;</p> <p>(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into</p>

	India, export from India or transshipment, of narcotic drugs or psychotropic substances;
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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. As per paragraph 8 of the status report, the petitioner has been in custody since 09.11.2024. As per the same, his custody is around eight months.

12. There is sufficient prima facie evidence connecting the petitioner with the alleged offence. The petitioner is behind bars from the last more than eight months and no useful purpose would be served by detaining the petitioner, quantity is non-commercial, as such, he is entitled to bail.

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 or 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.

18. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection squad 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.

19. 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 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."

20. 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."

21. 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.

22. 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.

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

24. A certified copy of this order is not required for furnishing bonds. An Advocate for the Petitioner can download the order from the Court's official web page and attest it as a true copy. If needed, the attesting officer can verify its authenticity online and use the downloaded copy to attest bonds.

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

(ANOOP CHITKARA)
JUDGE

31.07.2025
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.