

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

CRM-M-20034-2025
Reserved on: 01.08.2025
Pronounced on: 27.08.2025

Khushbu ...Petitioner

Versus

State of Punjab ...Respondent

CRM-M-21686-2025

Pawan @ Bhupinder Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.S.Rana, Advocate
for the petitioner(s).

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
047	12.03.2025	City Rajpura, District Patiala	22 of NDPS Act

1. Vide this common order, CRM-M No.20034 of 2025 and CRM-M No.21686 of 2025 are being disposed of. For brevity, the facts are being taken from CRM-M No.20034 of 2025.

2. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

3. In paragraph 18 of the bail petition, the petitioner declares that he has no criminal antecedents; however, per paragraph 15 of the short reply filed in CRM-M-20034-2025, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	148	2024	304(2)/118(1)/351(2)(3)/ 191(3)/190 of BNS, 2023	City Rajpura, District Patiala

4. Per paragraph 16 of the bail application CRM-M-21686-2025 and 15 of the short reply filed by the State, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	160	06.07.2017	61/1/14 of Excise Act	City Rajpura, District Patiala
2	198	05.07.2018	61/1/14 of Excise Act	City Rajpura, District Patiala
3	177	17.08.2021	21/61/85 of NDPS Act	City Rajpura, District Patiala
4	353	04.12.2023	409/420/465/467/468/471/ 120-B IPC	City Rajpura, District Patiala
5	68	01.10.2024	21 of NDPS Act	Kheri Gandian, District Patiala

5. The facts and allegations are taken from the short reply filed in CRM-M-20034-2025 by the State, which reads as follows:

“3. That the brief facts of the present case/FIR No. 47/2025 (supra) are that on 12.03.2025, when ASI Nishan Singh alongwith ASI Jagdev, HC Harminder Singh and SC Ramandeep Singh were patrolling for search of suspicious and bad elements and were present at T-point KSM Road, near Electricity Department chowk Rajpura, a motorcycle make Splendor without number plate was seen coming from KSM road side at about 10:30 PM. The said motorcycle was being ride by three youngsters and upon seeing the police party, the driver of the motorcycle tried to turn backwards but fell on the ground. In the meantime, the person sitting in the middle got up and took out one transparent polythene bag from right pocket of his trouser and threw it at the side of road. All the three youngsters were apprehended by the police party. The intoxicant powder was clearly visible from the transparent polythene bag thrown by them. Subsequently, ASI Nishan Singh requested the SHO, Police Station City Rajpura to come at the spot. That upon the receipt of information, Insp. Balwinder Singh, SIHO Police Station City Rajpura alongwith PHG Bikramjit Singh, on conveyance of official vehicle, reached at the spot and met with the police party headed by ASI Nishan Singh. Thereafter, upon enquiring by the SHO, the driver of the motorcycle disclosed his name as Gulshan, the youngster sitting in the middle disclosed his name as Vicky and the youngster sitting at the last disclosed his name as Sikander alias Lili. Thereafter, the SHO picked up the transparent polythene bag and intoxicant powder was recovered from it. Upon enquiring, the aforementioned Gulshan, Vicky and Sikander alias Lili also disclosed that the same was intoxicant powder. Upon weighing, the said intoxicant powder came out to be 550 gm. The polythene bag containing intoxicant powder was put in a plastic box to prepare a parcel. Thereafter, upon the search, currency notes amounting to Rs. 20,000/- was recovered from the pocket of Gulshan and currency notes amounting to Rs. 20,000/- was recovered from the pocket of Sikander alias Lili. The said money was put in a plastic box to prepare a parcel. Thereafter, parcel containing intoxicating powder and parcel containing drug money were sealed by SHO with his seal bearing impression "BS" and subsequently, the same were taken into police possession as per law. The aforementioned motorcycle was also taken into police possession. Consequently, present case/FIR was registered against aforementioned Gulshan, Vicky and Sikander alias Lili for the offence under Section 22 NDPS Act.”

6. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioners and their family.

7. The petitioner's counsel submits that the petitioners would have no objection whatsoever to any stringent conditions that this Court may impose, including that if the petitioners repeat 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 petitioners shall have no objection.

8. The State's counsel opposes bail and refers to the short replies filed in both the cases.

9. It would be appropriate to refer to the following portions of the short reply filed in CRM-M-20034-2025, which read as follows:

*“13. **The role of the petitioner:** - As per disclosure statement dated 15.03.2025 of accused Surbhi and Nisha, the petitioner alongwith co-accused Bhupinder Kumar alias Pawan used to take half of the intoxicant powder from them and further sell it to their customers.”*

10. It would be appropriate to refer to the following portions of the short reply filed in CRM-M-21686-2025, which read as follows:

*“13. **The role of the petitioner:** - As per disclosure statement dated 15.03.2025 of accused Surbhi and Nisha, the petitioner alongwith co-accused Khusbhu used to take half of the intoxicant powder from them and further sell it to their customers.”*

11. It would be appropriate to refer to the evidence collected against the petitioners, which is taken from the short replies, which read as follows:

*“12. **The evidence against the petitioner:** The disclosure statement dated 15.03.2025 of co-accused Surbhi and Nisha clearly reveals that the petitioner was also involved in the business of smuggling intoxicant powder And further that Moreover, the matter is pending investigation.*

12. Thus, the evidence collected so far consists of disclosure statements. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of BSA, 2023.

13. In Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, the majority view of a

three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

14. The status report filed by the police reveals that the investigator arraigned the petitioners as an accused based on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband. No other evidence is collected at this stage to connect the petitioners with the main accused. Thus, there is no justification to deny bail. As of now, FSL report is still awaited and it could not be said that the recovered contraband is commercial or non-commercial. Consequently, the petitioners have satisfied the first rider of section 37 of the NDPS Act at this stage only. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioners do not repeat the offense.

15. For now, the petitioners have prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioners do not repeat the offense.

16. Given the above, the penal provisions invoked 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 custodial interrogation or the pre-trial incarceration at this stage. 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 anticipatory bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

17. Given above, provided the petitioners are not required in any other case, the petitioners shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

18. 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)	

19. The bail order is subject to the petitioner’s complying with the following terms.

20. The petitioners are directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioners shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioners shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

21. 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 the uploading of this order on the official webpage of this Court 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 it is 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.

22. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the

Investigator/Officer-In-Charge shall give the petitioners notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

23. Notwithstanding anything stated above, if the contraband falls under the commercial quantity because of the laboratory report, then the petitioners shall be informed and supplied with a copy of the FSL report. He shall be granted 7 days to file another anticipatory bail application before the Sessions Court or this Court seeking bail for commercial quantity by meeting the rigors of S. 37 of the NDPS Act. The present bail order shall automatically stand recalled on the 8th day of the communication of the report of FSL to the petitioners.

24. This bail is conditional, with the foundational condition being that if the petitioners repeat 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, or violates S. 19, or 24, or 27-A of the NDPS Act, 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.

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

26. 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.

27. **Petition(s) allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

27.08.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.