

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33415-2025
Reserved on: 07.08.2025
Pronounced on: 27.08.2025

Lakhwinder Singh @ Fouji

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
144	17.09.2024	Special Task Force, Phase IV, District STF Wing, SAS Nagar, Mohali	21-A of NDPS Act (Section 29, 21(C), 17 of NDPS Act and 61(2) of BNS added later on)

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 17 of the bail petition, the petitioner declares that he has no criminal antecedents; however, as per paragraph 7(E) of the status report filed by the State, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	25	04.02.2023	21 of NDPS Act	Sadar Ferozepur
2	63	30.04.2023	21 of NDPS Act	Sadar Ferozepur

3. The facts and allegations are taken from the status report filed by the State. On 17.09.2024, based on prior information, the Police seized 460 grams of Heroin from the possession of co-accused. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.

4. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody.

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 their family.

6. 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.

7. The State’s counsel opposes bail and refers to the status report.

REASONING:

8. As per paragraph 7(A) of the status report, the name of the contraband is Heroin and its weight is 460 grams, and it constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	460 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	184.00%

<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)
Punishable U/s	S.21(c) of NDPS Act, 1985

<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.	56	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin	
Other non-proprietary name	*****	
Chemical Name	Diacetylmorphine	
Small Quantity	< 5 Gram	

Commercial Quantity	> 250 Gram
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Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)	11/14/1985

Sr. No.	2(xvi)(d)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	<p>2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts;</p> <p>Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one mililitre of substance, if liquid, is contained in every one hundred mililitre of the preparation and so on in proportion for any greater or less percentage:</p> <p>Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.</p>

9. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions set forth by the Legislature under Section 37 of the NDPS Act.

10. It shall be relevant to refer to paragraphs 4 & 7 of the status report, which read as follows:

“4. That it is submitted that FIR No. 144 (supra) was registered on the basis of secret information against co-accused Gursahib Singh @ Saba that he was bringing huge quantity of Heroin in his Fortuner car and it raid was conducted at his rented

accommodation Flat No.4 ground floor Aero Homes Society, Kharar; then huge quantity of Heroin can be recovered. On the basis of sand information report under Section 42 of NDPS Act and ruga for registering the present FIR was sent Thereafter, raid was conducted at the aforesaid rented premises of Gursahib Singh @ Saba and after obtaining consent from him, in compliance with the provision of Section 50 of NDPS Act, the search of his house was conducted and 460 gm Heroin was recovered, which was hidden in the Chimney in Kitchen. The said Heroin was taken into police possession recovery memo dated 17.09.2024.

Thereafter, Gursahib Singh @ Saba was questioned at the spot by the Investigating Officer, during which he stated that the recovered Heroin had been planted in his house by his live-in partner Tamanna Joshi and her husband 1 Harbans Rai with the help of some local persons. He also stated that his daughter had been kidnapped by Harbans Rai and other an FIR a day prior, i.c. 16.09.2024. regarding which he had registered Thus, Gursahib Singh was not arrested at the spot.

7(A). The name and total weight of the drug.

460 gm Heroin.

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

The petitioner was arraigned as accused on the basis of questioning of Gursahib Singh and call detail records which showed that the petitioner was in touch with Harbans Rai.

C. The evidence against the petitioner.

The petitioner conspired with co-accused Harbans Rai, Manjeet Singh, Tamanna Joshi and along with co-accused Manjeet Singh delivered the recovered commercial quantity of heroin to co-accused Tamanna Joshi.”

11. Thus, the evidence collected so far consists of call details. 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.

12. 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.

13. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the call details and 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 petitioner with the main accused. Thus, there is no justification to deny bail. Consequently, the petitioner has satisfied the first rider of section 37 of the NDPS Act. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

14. For now, the petitioner has 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 petitioner does not repeat the offense.

15. Per the custody certificate dated 06.08.2025, the petitioner's custody in this FIR is of 10 months and 18 days.

16. Co-accused of the petitioner namely Tamanna Joshi and Nitin Pal have already been granted bail vide order dated 26.05.2025 and 23.06.2025 passed in CRM-M No.9767 of 2025 and CRM-M No.31182 of 2025 respectively and petitioner is also entitled to bail on the grounds of parity.

17. 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.

18. 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)

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

20. 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.

21. Given the background of allegations against the petitioner, 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 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 society; it would also restrain the accused from influencing the witnesses and repeating the offense.

22. 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."

23. 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."

24. 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.

25. **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.

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

27. 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.”

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

(ANOOP CHITKARA)
JUDGE

27.08.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.