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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23143-2025

Reserved on: 13.08.2025

Pronounced on: 29.08.2025

JAGJIT SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sunny K. Singla, Advocate for the petitioner.

Ms. Pooja Nayar Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
38	26.03.2025	Doraha, District Khanna	21/27-A/29 of NDPS Act, 1985 and Section 111(2) of BNS, 2023 (offence under Sections 25/54/59 of Arms Act, 1959 added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. Vide order dated 01.05.2025, petitioner was granted interim protection, which is continuing till date.
3. Per paragraph 18 of the bail petition, the petitioner has no criminal antecedents.
4. The facts and allegations are taken from the order dated 19.04.2025 passed by the Judge, Special Court, Ludhiana, which reads as under:-

“Prosecution case is that on 26.3.2025 ASI Satpal Singh alongwith other police officials was on routine patrolling duty in the area of village Chankoian towards village Maksudra. In the mean time one car Verna of silver colour bearing registration no. PB11-N-9393 was seen coming from the house of Ex Sarpanch Jagjit Singh. 'The said car was stopped and the persons sitting in the said car were nabbed. On asking, they disclosed their name as Anuj @ Lalla, Ravi Kumar @Kartoos, Suraj Singh and Swarandeep Singh and 20 grams heroin, Indian currency notes of Rs.3,50,000/- and 33 foreign American dollars were recovered from them. During interrogation, they disclosed that they used to sell the intoxicants after taking same from Jagjit Singh @ Jaggi. On 27.3.2025 the above mentioned accused Anuj @ Lalla, Ravi Kumar @ Kartoos, Suraj Singh and Swarandeep Singh were arrested in this case. On the disclosure statement of accused Ravi Kumar @ Kartoos, on 28.3.2025 accused Kala Singh son of

Sukhdev Singh village Chankoian was nominated as an accused in this case. On the disclosure statement of accused Ravi Kumar @ Kartoos, one pistol 32 bore country made, two cartridges and two kirpans were recovered. On 29.3.2025 accused Harpal Singh son of Sajjan Singh was nominated as an accused in this case. On the disclosure statement of accused Harpal Singh, accused Kuldeep Singh was nominated as an accused in this case. On 1.4.2025 accused Harpal Singh was arrested in this case. 13 pistols 32 bore were recovered from accused Harpal Singh and Kuldeep Singh.”

5. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and the CrPC, 1973.
6. During custodial interrogation, the main accused, confessed before the Police officer that they had purchased the drugs from the petitioner. Based on such a confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.
7. 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 petitioner and their family.
8. 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 Special Judge or Sessions 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.
9. The State’s counsel opposes on instructions.

REASONING:

10. Dealing in heroin, without a license, constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	20 Gram
Quantity type	Intermediate
<i>Drug Quantity in % to upper limit of Intermediate</i>	8.00%

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

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985		
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	

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	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; 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: 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.
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11. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

12. Section 2 (vii-a) of the NDPS Act defines commercial quantity as 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.

13. Thus, the evidence collected so far consists of disclosure statements and the petitioner’s confession without discovering any facts. 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.

14. 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.

15. Pleadings before this Court reflects that the investigator arraigned the petitioner 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 petitioner with the main accused. Thus, there is no justification to deny bail.

16. In Baldev Singh v. State of Punjab, SLP (Crl). 2364-2025, decided on 09-07-2025, the Hon’ble Supreme Court holds,

accused for the offences punishable under Section 15B of the NDPS Act and is facing investigation. Vide order dated 09.04.2025, interim protection was granted to the petitioner, subject to cooperation in the investigation. Having considered the entire facts of the matter and the statement made by Ms. Nupur Kumar, learned counsel for the State, we do not think that this is a case where custodial interrogation of the petitioner is required. Hence, the order dated 09.04.2025 is made absolute.

17. Petitioner was granted interim protection, in the interregnum there is no allegation that petitioner hamper with the investigator or not joined the investigation, as such, no ground is made out to discontinue the interim protection. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

18. Petition allowed in terms mentioned above. Interim order dated 01.05.2025 is made absolute subject to the conditions made in of para No.18. All pending applications, if any, stand disposed of.

19. The petitioner is 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 petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner 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 petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

(ANOOP CHITKARA)
JUDGE

29.08.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.