

CRM-M-30166-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30166-2025
Reserved on: 10.07.2025
Pronounced on: 16.07.2025

Gagandeep Singh @ Gagni ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Aditya Anand, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
33	03.03.2024	Sidhwan Bet, District Ludhiana Rural	21/22/25 & 29 (added later on) 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. Per the custody certificate dated 09.07.2025 as well as para 11 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	92	03.05.2022	21/61/85 of NDPS Act	Dharamkot
2	29	03.06.2023	22/61/85 of NDPS Act	Talwandi Chaudhrian

3. The facts and allegations are taken from the reply filed by the State. On 03.03.2024 based on prior information, the Police seized 4 gram heroin and 900 intoxicant tablets marka Diphenoxylate Hydrochloride & Atropine Sulphate Tablets IP Lomotil 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's counsel seeks bail on the grounds of prolonged pretrial custody.
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

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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.

6. The State’s counsel opposes bail and refers to the reply.

REASONING:

7. As per para 13 of reply, the weight and name of drug is 04 gram heroin and 56.7 gram of intoxicant tablets.

8. The above drugs is a punishable offence in the following terms:

Substance Name	Diphenoxylate
Quantity detained	56.7 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	113.40%

<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(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
Sr. No.	44	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Diphenoxylate	
Other non-proprietary name	*****	
Chemical Name	1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester	
Small Quantity	2 Gram	
Commercial Quantity	50 Gram	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985
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Notification No. & dated	S.O.826(E)	11/14/1985
Sr. No.	58	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	DIPHENOXYLATE	
Other non-proprietary name	*****	
Chemical Name	Ethyl 1-(3-Cyano-3, 3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester (the international non-proprietary name of which is Diphenoxylate), and its salts, preparations, admixtures, extracts and other substances containing any of these drugs, except preparations of diphnoxybate containing, per dosage unit, not more than 2.5 mg. of diphenoxylate calculated as base, and a quantity of atrophine sulphate equivalent to at least one per cent of the dose of diphenoxylate.	

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. The petitioner is entitled to bail because for the same drug, and when the quantity involved was either more or closer to the quantity seized in the present FIR, the Hon’ble Supreme Court has granted bail on prolonged custody in the following judicial precedent:

11. In *Ajay Khatri v. The State of Rajasthan*, decided on 20-03-2025, SLP (Crl) No. 1228-2025, the Hon’ble Supreme Court holds,

The case of the prosecution is that 6600 Alprazolam Tablets weighing 818.4 grams have been recovered from his possession. He has already undergone more than one year in jail.
Considering the period of incarceration of the petitioner, we are of the opinion that a case of bail is made out for the petitioner and therefore, the prayer for bail is allowed.

12. Per the custody certificate dated 09.07.2025 the petitioner's custody in this FIR is of 01 year, 04 months & 03 days.

13. 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.

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

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14. Following the judicial precedent mentioned above, without commenting on the case's merits, and considering the petitioner’s pre-trial custody, the weight of the drugs, coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage.

CONDITIONS:

15. 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.

16. 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)

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.

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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. 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 Special Judge/ Sessions 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.

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

23. 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.

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

(ANOOP CHITKARA)
JUDGE

16.07.2025

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Whether speaking/reasoned: Yes

Whether reportable: No.