

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63625-2024
Reserved on: 16.01.2025
Pronounced on: 29.01.2025

Joginder ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Raman Chawla, Advocate for the petitioner.

Mr. Naveen Kumar Sheoran, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
828	02.12.2024	HTM, District Hisar	20 (b) of NDPS Act

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. Per paragraph 11 of the bail application and para 6 of the status report dated 11.01.2025, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	53	15.04.2021	21 B of NDPS Act	Ding Sirsa
2.	351	30.04.2020	61/1/14 of Excise Act	HTM, Hisar
3.	50	05.03.2022	25 of Arms Act	Pallu, District Hanu-mannagar, Rajasthan
4.	545	22.07.2020	21-B of NDPS Act	HTM, Hisar
5.	1149	17.12.2021	20-B NDPS Act	Sadar Hlsar

3. The facts and allegations are taken from the reply filed by the State. On Nov 30, 2024, the Police seized 12.266 KG of Ganja from co-accused Phool Singh's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.

4. During custodial interrogation, co-accused, Phool Singh, confessed before the Police officer that the Ganja belonged to his son, who had asked him to pick it up from a person from a designated place. Based on such 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.

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 State's counsel opposes bail and refers to the reply.
7. It would be appropriate to refer to the following portions of the reply, which read as follows:

“4. That after registration of the FIR, a fair and impartial investigation was carried out by the local police and during investigation the place of occurrence was inspected and a map was prepared and statements of witnesses were recorded and the co-accused was arrested. In custody, the accused suffered a disclosure statement mentioning that recovered Ganja had been brought by him on the asking of his son (petitioner/accused). He stated in his disclosure statement that he has 6 children, two sons and four daughters. The eldest son Jogender (petitioner/accused) and two daughters are married. He is from a poor family and his son Jogender (petitioner/accused) has been selling ganja for many days. On 01.12.24, his son Jogender (petitioner/accused) sent him to Kashmiri Gate, Delhi and told me that he will meet a man there, he will give you ganja, bring it. His son Jogender (petitioner/accused) handles the money transactions, he does not know how much this ganja is worth. He went to Kashmiri Gate, Delhi, after some time a man came there and gave him this 12.266 kg ganja and he took the ganja back to Hisar Cantt by bus. From there he was going to his home in Mirzapur road, Kaushik Nagar by a three wheeler. When he got down from the three wheeler and was walking home, the police caught him near the bypass with the ganja. He also demarcated the place from where he had brought the ganja from an unknown person. Copy of the disclosure statement of the co-accused is annexed as Annexure R-1.”

8. Dealing in 12.266 kg of ganja is a punishable offense under the NDPS Act in the following terms:

Substance Name	Ganja
Quantity detained	12.266 Kg
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	61.33%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	55
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Ganja
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	1000 Gram (i.e. equivalent to 1 Kg)
Commercial Quantity	20000 Gram (i.e. equivalent to 20 Kg)

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	2(iii)(b) NDPS Act, 1985, S.O.821(E)
dated	11/14/1985
Sr. No.	2(iii)(b)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(iii)(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; S. 2(viii b)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

9. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

10. 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.

11. 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.

12. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, for the purpose of bail, the evidence is insufficient. Given the penal provisions invoked, the quality of evidence, coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, pre-trial incarceration at this stage would be unjustifiable.

13. Given the above, 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 anticipatory bail.

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 Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa 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.

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

17. 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.

18. 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.

19. Given the background of allegations against the petitioner, it becomes paramount to protect the 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 the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

20. 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 petitioner notice of a

minimum of seven days, providing an opportunity to avail the remedies available in law.

21. In Md. Tajiur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, 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.”

22. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State shall file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to 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 would not be needed for furnishing bonds, and any Advocate for the Petitioner 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.

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

(ANOOP CHITKARA)
JUDGE

29.01.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.