

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3242-2025
Date of decision: 24.01.2025

Nihal Paswan ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashish Grewal, Advocate,
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
1033	20.12.2021	City Yamuna Nagar	21-b of the 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. In paragraph 15 of the bail petition, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Sections	Police Station
1.	115	09.02.2023	174-A IPC	City Yamuna Nagar, District Yamuna Nagar
2.	117	10.02.2023	174-A IPC	City Yamuna Nagar,
3.	354	03.10.2020	308, 148, 149, 323, 506, 332, 353 IPC	Sadar Yamuna Nagar

3. The facts and allegations of the case are that on Dec 20, 2021, based on secret information, the Police seized 6 grams of smack 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 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.



5. The State's counsel opposes bail.
6. It would be appropriate to refer to the other facts from the copy of the impugned order dated 25-11-2024.

“FIR Version:

3. The petitioner-accused has sought the indulgence of this court for grant of regular bail in the aforementioned FIR whereby petitioner Nihal Paswan alias Kaniya was apprehended with 6 gram smack on the basis of secret information

Contentions on behalf of the applicant-accused

4. It has been argued by the learned counsel for the applicant- accused that earlier, the applicant-accused was admitted to regular bail on 02.04.2022. He has further contended that on 18.04.2022, due to illness, the applicant-accused failed to appear before the Court and his warrant of arrest were issued He has further submitted that the applicant-accused was produced before the Court on 10.02. 2023 and since then, he is in custody. He has further argued that the applicant-accused undertakes not to jump bail again. It has, thus, been prayed that the bail application of the applicant- accused may be allowed.

Contentions of The Learned Assistant Public Prosecutor

5. Refuting the aforesaid contentions, the learned Assistant Public Prosecutor has opposed the bail application on the ground that the applicant- accused absented from the proceedings without any reasonable cause. Further argued that the applicant-accused was declared Proclaimed Person vide order dated 26.10.2022 and in case, he is admitted to bail, he may delay trial. Further contended that there is no change of circumstances after the dismissal of the earlier bail applications. Further submitted that the applicant-accused is a habitual offender as apart from the present FIR, four other FIRs have been registered against the petitioner-accused. Hence, it has been prayed that applicant-petitioner may not be granted the bail.”

7. Earlier vide order dated 02.04.2022, Additional Sessions Judge, Yamuna Nagar at Jagadhri, had granted regular bail to the petitioner. However, immediately after getting the bail, the petitioner absented from 18.04.2022 and his bail was cancelled and was declared as a proclaimed person on 26.10.2022. Later on, he was arrested on 10.02.2023 and is in custody. The trial Court was aware of all these facts and despite that the bail was



dismissed by different Additional Sessions Judges posted in Jagadhri, without ignoring that the quantity involved was just 6 grams of heroin which is just 2.40 percent of upper limit of intermediate quantity and a gram above this upper limit is a small quantity.

8. Dealing in 6 grams of smack is a punishable offense under the NDPS Act in the following terms:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar
Quantity detained	6 Gram
Quantity type	Intermediate
<i>Drug Quantity in % to upper limit of Intermediate</i>	2.40%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1055(E)
dated	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	S.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)
dated	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 millilitre of substance, if liquid, is contained in every one hundred millilitre 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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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 the quantity 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. 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.

12. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, per paragraph 5 of the bail petition, the petitioner has been in custody since 10.02.2023. Per the custody certificate dated 22.01.2025, the petitioner's total custody in this FIR is 02 years, 02 months and 29 days.

13. Although the petitioner was absent from the trial, given the quantity involved being 6 grams of heroin, and the proportionate sentence in case of conviction, even if the petitioner is found guilty, none would be able to justify the sentence the petitioner has already undergone in this case. Thus, the mechanical rejection of bail on the grounds of a bail jump is, in all likelihood, going to cause an irreparable injustice to the petitioner.

14. Given the penal provisions invoked viz-a-viz pre-trial custody, 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 further pre-trial incarceration at this stage, subject to



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the compliance of terms and conditions mentioned in this order.

15. 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 bail. This order shall come into force from the time it is uploaded on the official webpage of this Court.

16. 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 personal bonds of Rs. 5,000/- to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate.

17. Petitioner is directed to attend each and every date of hearing before the trial Court.

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

19. 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.

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

(ANOOP CHITKARA)
JUDGE

24.01.2025.
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Whether speaking/reasoned: Yes
Whether reportable: YES.