

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2079-2025
Reserved on: 03.04.2025
Pronounced on: 29.04.2025

Lachho Devi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. J.K. Singla, Advocate and
Ms. Shivani Singla, Advocate,
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
241	30.11.2024	City Budhlada, Distt. Mansa	20, 21, 22, 27, 29 of NDPS Act and Sections 111 and 223 of BNS, 2023

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. As per paragraph 8 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	84	09.07.2018	20 of NDPS Act	City Budhlada

3. The facts and allegations are taken from the status report filed by the State. On 30.11.2024, based on secret information that petitioner and co-accused are involved in drug business and police registered case and one Pawan Kumar and Ranga Ram and seized 45 intoxicating capsules from said Pawan Kumar's possession and 60 capsules and 260 grams Ganja from Ranga Ram and 150 grams Ganja from co-accused Dharma. Accused Pawan Kumar disclosed that he had brought these intoxicating capsules from the petitioner. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNS, 2023. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, she filed for anticipatory bail from the Sessions Court, which denied her bail. Feeling aggrieved, she has invoked

the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

4. Counsel for the petitioner submits that she would have no objection in case any stringent conditions this Court might put upon the petitioner including surrender of fire arms, and in case, petitioner repeats the offence, where the sentence prescribes 07 years or more, the State shall file an application for cancellation of bail. He further contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and her family.

5. The State's counsel opposes bail and refers to the status report.

6. It would be appropriate to refer to the following portions of the status report dated 28.02.2025, which read as follows:

5. The evidence against the petitioner

That, the investigation proceedings, it was ascertained by the answering deponent that during the police interrogation from accused Pawan Singh, he had made his disclosure statement with the IO under section 23(2) BSA and in the light of his disclosure statement and on his demarcation 03 strips of Pregabalin capsules IP Signore, each strip containing 15 capsules, total 45 intoxicating capsules were recovered. It was further disclosed by accused Pawan Singh that he had brought these intoxicating capsules from petitioner Lachho Devi. On which, offence under section 29 of the NDPS Act was added in the present case/FIR, vide DDR No.28, Dated 01.12.2024. Further the Call Detail Reports of the petitioner Lachho Devi (Mobile No. 98159-xxxxxxx, 95015-xxxxxxx) and Pawan Kumar (Mobile No. 99155-xxxxxxx), have been obtained from dated 01.11.2024 to 09.12.2024 and from the CDRs it was revealed that Lachho Devi (presently petitioner in this petition) was regularly in touch from her mobile number 98159- xxxxxxx with other co-accused of the above mentioned case i.e. Pawan Kumar on his mobile no. 99155-xxxxxxx . Further it is worth mentioning that there were two mobile numbers on the name of Lachho Devi (as mentioned above) and from their CDRs it was revealed that regular calls have been exchanged between these two numbers which shows that out of these two numbers one number is being used by someone else despite the fact that it is registered on the name of petitioner Lachho Devi. So, there is high probability that this number may be used by any other co-accused of the case as Lachho Devi is the gang leader. As such, role of the petitioner is duly established, hence present case/FIR has been rightly registered against the petitioner Lachho Devi. Further in order to complete the investigation proceedings custodial interrogation of the petitioner is required to the police authorities.

REASONING:

7. Petitioner is a woman and given the undertaking by counsel for the petitioner that in case the petitioner repeats the offence where the sentence prescribed is seven years or more, then the State may file an application for cancellation of bail and petitioner is found involved in one case under the NDPS Act but it cannot be said at this stage that they were doing the crime in organized manner and all this is matter of evidence, as such, she is entitled to bail.

8. As concerned for the involvement of petitioner in drug trafficking, no recovery has been effected from the petitioner, however, she was in touch with Pawan Kumar through his mobile phone and given the quantity of drug, no ground is made out to deny her bail.

9. The evidence collected so far consists of disclosure statements. 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.

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

11. 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.

12. 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.

13. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, it is insufficient for the purpose of denying bail.

14. Given the penal provisions invoked, the legal admissibility of evidence collected against the petition, 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 custodial interrogation or pre-trial incarceration.

15. 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.

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 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 Ilaqa 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.

17. 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)	

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

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.

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 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 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.

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 Hon'ble Supreme Court holds 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 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.

24. 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."

25. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to 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. 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.

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

(ANOOP CHITKARA)
JUDGE

29.04.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.