

CRM-M-3112-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3112-2025
Reserved on: 06.08.2025
Pronounced on: 27.08.2025

Kanhiya Lal ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.K. Tripathi, Advocate
for the petitioner.

Mr. Atul Gaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
176	04.04.2023	Hodal, District Palwal	20(ii)(c) of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, seeking regular bail.
2. Per paragraph 14 of the bail petition as well as custody certificate dated 03.08.2025, the petitioner has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 04.04.2023 based on prior information, the Police seized 22 kg 300 grams ganja from a car in which petitioner was travelling. 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 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. Counsel further 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 Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and may do

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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 paragraph 10 of the reply, the name of the contraband is ganja and its weight is 22 kg 300 grams, and it constitutes an offense under the following provisions and notifications:

Substance Name	Ganja/ Bhang Patti
Quantity detained	22.3 Kg
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	111.50%

<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)
Punishable U/s	S.22(c) of NDPS Act, 1985

<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.	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. & dated	2(iii)(b) NDPS Act, 1985, S.O.821(E)	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;

8. 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.
9. The petitioner is entitled to bail because, in somewhat similar cases where the quantity involved was either greater than or close to the amount seized in the current FIR, the Hon’ble Supreme Court has granted bail after prolonged custody, as demonstrated by the following judicial precedent.
10. In Dheeraj Kumar Shukla v. The State of Uttar Pradesh, decided on 25 Jan 2023, SLP (Crl) 6690-2022, Hon’ble Supreme Court holds,
- [1]. The petitioner seeks enlargement on regular bail in FIR No.325/2020, dated 23.06.2020, under Sections 8 and 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘the Act’) registered at Police Station Jhunsi, District Pryagraj, Uttar Pradesh.

[2]. The allegations are that on a secret information, the police authorities intercepted two vehicles on 23.06.2020 i.e. one ‘Gray’ coloured ‘Honda City’ Car and the second ‘White’ coloured ‘Swift Dzire’ Car. On an interrogation at the spot, Praveen Maurya @ Puneet Maurya, Rishab Kumar Maurya and Dheeraj Kumar Shukla were found to be occupants of the ‘Honda City’ Car whereas the petitioner was driving the ‘Swife Dzire’ Car. On taking a search, more than 92 kgs. Ganja was allegedly recovered from

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'Honda City' Car whereas more than 65 kgs. Ganja was recovered from 'Swift Dzire' Car. The accused were arrested at the spot. The petitioner is, thus, in custody since 24.06.2020.

[3]. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.

[4]. For the reasons stated above but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.

11. In Rabi Prakash v. The State of Odisha, decided on 13-07-2023, SLP (Crl) No. 4169-2023, Hon'ble Supreme Court holds,

[2]. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

[3]. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

[4]. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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 Act.

[5]. However, we find some merit in the contention of learned counsel for the respondent – State that the petitioner being not a resident of the State of Orissa, some stringent conditions are required to be imposed upon him.

[6]. Consequently, while directing that the petitioner shall be released on bail on his furnishing bail bonds to the satisfaction of the Trial Court, it is directed that he shall be required to produce two local sureties before the Trial Court. The petitioner shall also appear before the Trial Court on every date 3 of hearing. In case he absents himself, it shall be taken as a misuse of concession of bail granted to him today by this Court. Ordered accordingly.

12. In Johnson v. State Rep by The Inspector of Police, NIB – CID, decided on 18-Oct-2024, SLP (Crl) 9737-2024, Hon'ble Supreme Court holds,

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- [2]. The allegations are that 150 kgs. of ganja was recovered from the trunk of the petitioner's car. The vehicle was intercepted on some secrete information while the petitioner was driving the same. The petitioner was arrested on 26.03.2021 and is in custody since then. The bail was declined primarily on the ground that a huge quantity of ganja, which falls in commercial category, was recovered from the conscious possession of the petitioner.
- [3]. Though, learned senior counsel for the State informs that the trial has commenced and some of the witnesses have already been examined, it seems to us that the final conclusion of the trial will take some more time.
- [4]. Taking into consideration the fact that the petitioner has already spent more than 3½ years in custody and there are no criminal antecedents, we are satisfied that the conditions of Section 37 of the NDPS Act are deemed to have been adequately met with. Consequently, but without expressing any opinion on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court. He shall remain present on each and every date of hearing before the Trial Court till the trial is concluded.

13. In *Bhola Shikari v. The State of Chhattisgarh*, decided on 11-Nov-2024, SLP (Crl) 13236-2024, Hon'ble Supreme Court holds,

In connection with FIR No. 150 of 2024 dated 10.03.2024, registered at Police Station-Sipat, District Bilaspur, Chhattisgarh under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), the petitioner was arrested on 10.03.2024, as the petitioner along with three others were found in joint possession of 21 Kgs of Ganja.

Heard learned counsel appearing for the petitioner and also the learned counsel appearing for the respondent-State.

It is submitted by the learned counsel appearing for the State that final report was already filed and thereafter, the Court has also framed the charges against them.

In the said circumstances and taking note of the fact that the petitioner has been in custody since 10.03.2024, we are of the considered view that this special leave petition can be disposed of ordering that the petitioner shall be released on bail, subject to the stringent terms and conditions to be imposed by the Trial Court. Ordered accordingly.

14. In *Biswajit Ghosh v. State of West Bengal*, SLP (Crl.) No.14045-2024), decided on 18-11-2024, Hon'ble Supreme Court holds,

Learned counsel for the appellant(s) submitted that the first appellant is the driver and second appellant herein is the helper in the Truck in which substance 'Ganja' was seized; that they have been in jail for about one year and seven months; though, there are eighteen witnesses, who are to be examined and till date the trial has not yet commenced. He further submitted that the appellants herein have nothing to do with the substance, which was being carried in the Truck. The Truck belongs to another person, who is the owner of the Truck and hence there can be no mens rea attributed to them. Therefore, the impugned order(s) may be set aside and relief may be granted to the appellants herein.

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Per contra, learned counsel for the respondent/State vehemently submitted that the appellants herein are carriers and the quantity of the substance 'Ganja' is 30.780 Kgs. and therefore, the appellants are culpable. There is no merit in this appeal; hence the appeal may be dismissed.

Considering the facts on record, in our view, the case for bail is made out.

15. In Pallab Senapati v. The State of West Bengal, decided on 19-11-2024, SLP (Crl) No. 14344-2024, Hon'ble Supreme Court holds,

Learned counsel for the appellant submitted that he is in jail for over two years and though the trial has commenced, out of eleven witnesses only four witnesses have been examined; that there is a possibility of trial being delayed. Hence, this Court may set aside the impugned order and grant relief of bail to the appellant herein.

Per contra, learned counsel for the respondent-State submitted that as 22.50 Kgs. of Ganja were recovered from the appellant herein. That since only seven more witnesses have to be examined, instead of releasing the appellant on bail a direction may be issued to the Trial Court to conclude the trial expeditiously. He submitted that there is no merit in this appeal. We have considered the submissions advanced at the Bar.

We find that the case for bail is made out.

16. In Sunil Kumar Gupta v. State of Bihar, SLP (Crl.) No. 12917-2024, decided on 3-12-2024, Hon'ble Supreme Court holds,

Learned counsel for the appellant submitted that the appellant is the Driver of the vehicle, from which about 30 kilograms of Ganja was recovered. He has nothing to do with the same as he was only employed by the owner of the vehicle and that the passengers in the vehicle, who are the other accused, were carrying the said substance, and the appellant was only discharging his duties as a Driver. However, since the recovery was made from the car, in question, the appellant also has been foisted with the offences. Learned counsel for the appellant also submitted that there are no criminal antecedents insofar as he is concerned and hence, the impugned order may be set aside and the relief of bail may be granted to him and as he is been in jail from one year and two months. Per contra, learned counsel for the respondent(s)-State, with reference to his counter affidavit, submitted that the appellant herein was equally involved in the crime and that he has permitted the substance to be placed in the car from which it was recovered. At this stage, it cannot be known as to whether the appellant herein was only complying with the instructions of the owner of the car or he was equally involved in the commission of the offences. There is no merit in the appeal and hence it may be dismissed. Considering the facts on record, in our view, the case for bail is made out.

17. In Tarak Singh v. The State of West Bengal, decided on 09-12-2024, SLP (Crl) No. 13147-2024, Hon'ble Supreme Court holds,

The petitioner is an accused in a case bearing FIR No.186/2023 registered with Police Station Panchla, District Howrah, West Bengal, for the offences punishable under Sections 20(b)(ii)(C) & 29 of the Narcotic Drugs and Psychotropic Substances Act. The allegation against the petitioner is that 28 kgs. ganja (contraband article) recovered from him. The bail application of the petitioner was dismissed by the High Court. Being aggrieved he approached this Court. He has already undergone about 1 ½ years in jail.

Considering the period of incarceration of the petitioner and the fact that the

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petitioner has no other criminal antecedents, we are of the opinion that a case of bail is made out for the petitioner.

18. In Santosh Sahoo v. The Union of India, SLP (Crl.) No. 1737-2025, decided on 17-03-2025, Hon'ble Supreme Court holds,

The petitioner is an accused in a case initiated by Narcotics Control Bureau, Kolkata Unit on 09.01.2023 being Crime No.03/NCB/KOL/2023 for the offences punishable under Sections 20(b)(ii)(c)/29/35/54 of the Narcotic Drugs and Psychotropic Substances Act. The allegation is that 88 Kgs of Cannabis (contraband article) was recovered from the four alleged accused persons including the petitioner. The bail application of the petitioner was dismissed by the High Court. He has already undergone about 1 year & 9 months in jail. Being aggrieved, petitioner approached this Court and this Court issued notice to the Union of India on 03.02.2025.

Heard learned counsel for the petitioner. As per office report dated 06.03.2025, service of notice is complete on the Union of India. In spite of this, none appears for the Union of India. However, till now only one witness is partially examined by the Trial Court and the trial has been delayed.

Under these circumstances, we are of the opinion that a case of bail is made out for the petitioner.

19. In Mohit Chaturvedi v State of Madhya Pradesh, SLP (Crl.) No. 1303-2025, decided on 04-04-2025, Hon'ble Supreme Court holds,

[2], In the facts of the present as per the prosecution allegations, the petitioner, who was driving the motorcycle, and the co-accused Prem Parte, was the pillion rider, said to have been found in possession of contraband. The total quantity recovered was 25.682 Kilograms ganja. However, with aid of Section 29 of the NDPS Act, the petitioner and the co-accused were implicated, indicating the quantity as commercial.

[3]. Having considered the submissions and the period of custody undergone is more than one year and that the chargesheet has already been filed. In the facts and all attending circumstances, without expressing any opinion on the merits of the case, we deem it appropriate to release the petitioner on bail.

20. In Shubham Yadav v. The State of Chhattisgarh, Special Leave to Appeal (Crl.) 4217-2025, decided on 08-07-2025, the Hon'ble Supreme Court holds,

[2]. The petitioner is involved in a case under the Narcotic Drugs and Psychotropic Substances Act and it is alleged that he was illegally transporting 79kg of Ganja.

[3]. All the three prime witnesses, PW-1, PW-2 and PW-3 have turned hostile. The petitioner has already suffered incarceration for a period of two and half years. The trial is likely to take some more time.

[4]. In the facts and circumstances of the case, we are of the opinion that the petitioner deserves to be enlarged on bail.

21. In Gaurav Sahu v. State of Chhattisgarh, Special Leave to Appeal (Crl.) 5311-2025, decided on 14-07-2025, the Hon'ble Supreme Court holds,

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The petitioner is an accused in a case bearing Crime No.71/2024 registered at Police Station-Singhoda, District- Mahasamund, Chhattisgarh for the offences punishable under Section 20(B) of the Narcotic Drugs and Psychotropic Substances Act. The allegation against the petitioner is that about 22 kg. Ganja was recovered from him and presently he is facing trial. His application for bail was dismissed by the High Court under the order impugned. Being aggrieved, he approached this Court. He has already undergone about one year in jail. Heard learned counsel for the petitioner and the respondent-State. Notice has been issued in this matter on 04.04.2025 and as per office report dated 11.07.2025, notice was served on the State on 25.04.2025. Despite this no counter affidavit has been filed by the learned counsel for the State after such a long time. Having regard to the records available and the facts and circumstances of the case, we are of the opinion that a case of bail is made out for the petitioner. Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court.

22. In *Sajedabanu Munnabhai v. State of Gujarat*, SLP(Crl.) 8135-2025, decided on 04-08-2025, the Hon'ble Supreme Court holds,

Learned counsel for the appellants submitted that the appellants are wife and husband; that the allegations as against the appellants herein are not true. However, charges have been framed and the trial is proceeding; that there are as many as thirty witnesses to be examined, out of whom only three have been examined; but the appellants have been in jail since 30.10.2023 and in another two -three months' time it would be two years. The continuous incarceration of the appellants would be a harassment to them in the event they are to be ultimately acquitted as they have a good case on merits. In the circumstances learned counsel for the appellants submitted the impugned orders may be set aside and the relief of bail may be granted to the appellants herein.

Per contra, learned counsel for the respondent opposed the grant of relief of bail to the appellants herein by contending that contraband substance being 25.390 kilograms of ganja was recovered and seized from them; that the appellants have been actively involved in the supply and trade of the narcotic substance; that if this Court is to issue a direction to the concerned Special Court for conclusion of the trial expeditiously, the same would be complied with. Hence, there is no merit in these appeals.

Considering the facts on record, in our view, the case for bail is made out.

23. Per the custody certificate dated 03.08.2025 the petitioner's custody in this FIR is of 02 years & 22 days.

24. 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.

25. 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,

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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coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage. However, this order shall take effect from the time it is uploaded to this Court's official webpage.

CONDITIONS:

26. 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 Ilqa 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.

27. 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)

28. This order is subject to the petitioner’s complying with the following terms.

29. 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.

30. 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 society; it would also restrain the accused from influencing the witnesses and repeating the offense.

31. The conditions mentioned above imposed by this court are to endeavor to reform

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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."

32. 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."

33. 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 concerned 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.

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

35. In *Amit Rana v. State of Haryana*, CRM-18469-2025 [in CRA-D-123-2020, decided on 05.08.2025], a Division Bench of Punjab and Haryana High Court in paragraph 13, holds that "To ensure that every person in judicial custody who has been granted bail or whose sentence has been suspended gets back their liberty without any delay, it is appropriate that whenever the bail order or the orders of suspension of sentence are not immediately sent by the Registry, computer systems, or Public Prosecutor, then in such a situation, to facilitate the immediate restoration of the liberty granted by any Court, the downloaded copies of all such orders, subject to verification, must be accepted by the Court before whom the bail bonds are furnished."

36. Petition allowed in terms mentioned above. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

27.08.2025

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Whether speaking/reasoned: Yes

Whether reportable: No.