

CRM-M-14044-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14044-2025
Reserved on: 02.07.2025
Pronounced on: 16.07.2025

Nadeem Ahmed ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vaibhav Narang, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
305	21.12.2022	A Division, District Amritsar	22(C), 27A, 29 of NDPS Act and 420, 468, 471, 120B, 34 IPC

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. In Note mentioned at page 6 of the petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply dated 29.03.2025 filed by the State. On 21.12.2022 based on secret information, the Police arrested Nishan Sharma and recovered 29920 intoxicant tablets of Tramadol Hydrochloride from him. During the custodial interrogation, he stated that he had brought tablets from Nadeem Ahmed (present petitioner). The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. The petitioner approached the Sessions Court for anticipatory bail, which was surprisingly denied.
5. Petitioner’s counsel submits that petitioner was nominated as accused on the basis of disclosure statement and has referred to para 20 of the reply dated 29.03.2025, which reads as follows:-

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*“THE EVIDENCE BASED ON WHICH THE PETITIONER WAS
ARRAIGNED AS AN ACCUSED*

20 That it is submitted that the present petitioner Nadeem Ahmed was nominated on the basis of disclosure statements suffered by co-accused Nishan Sharma and Usman Rajput as the accused Nishan Sharma had disclosed that he used to purchase intoxicant tablets from the present petitioner Nadeem Ahmed and co-accused Usman Rajput had disclosed that he used to sell intoxicant tablets and capsules to the present petitioner Nadeem Ahmed.”

6. Petitioner’s counsel further 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.

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

8. It would be appropriate to refer to the following portions of the reply, which read as follows:

“ That it is submitted that during the course of investigation of the present case FIR No. 305/2022 (supra), the spot inspection of aforesaid firm Report Remedies, E&7/2, UPSIDC, Industry area, Selaku. Dehradun, Uttarakhand and Firm B-102, Rock Valley, Sewlakalan, Dehradun, Uttarkahand was conducted on 23.12.2022 in presence of three Drug Inspectors and Assistant Drug Controller (In-charge) Food & Drug Control Administration, Uttarakhand. It was found that 85000 capsules Chelcido, 144000 tablets of LOS DOL. 100SR, 1,76,000/-tablets of COSIDOL 100 SR manufactured by Rapport Remedies E 07/2, UPSIDC, Industrial Area, Selaqui, Dehradun was purchased from this firm after cancellation of drug manufacturing license. Therefore, Usman the owner of the above said firm was nominated as co-accused person and he was arrested on 25.12.2022, who disclosed that he has sold 85000/- intoxicating capsules and 3,20,000/- intoxicating tablets to Manoj Kumar Sahu R/o B-102, Rock Valley. Sewlakaln, Dehradun factor MS Bluepen Laboratory. It was also disclosed by Usman Rajput that the intoxicant capsules and tablets, manufactured in his factor were also given to the present petitioner Nadeem Ahmed directly for selling different marketing firms. The present petitioner Nadeem Hasan had told that he used to further sell it to the persons of Punjab State. On the basis of disclosure statement of the accused Usman Rajpur, 85000 intoxicant tablets and 4,05,000/- intoxicating tablets were recovered and taken into possession.”

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REASONING:

9. On 08.04.2025, this Court had ordered further investigation and passed the following order:-

“The investigation conducted, and the evidence collected against the petitioner are referenced in the status report dated 29.03.2025 filed by the SHO, PS A Division, Amritsar.

After reviewing the evidence collected thus far and considering the seriousness of the crime, this Court is of the considered opinion that joining of petitioner and further investigation is necessary in this case.

To enable the petitioner to join interrogation without any duress or coercion, the petitioner makes a case for continuing the order of stay of arrest until further order. The Senior most Investigator is to file a fresh status report mentioning the evidence collected against the petitioner. It is clarified that if the senior most Investigator is the concerned DySP, in such circumstances he will file fresh status report, otherwise the senior most investigator or SHO shall have to do so and failure to do so, this Court shall direct the Senior Superintendent of Police to file the status report.

State counsel also seeks time to place on record the call details

Given above, this Court is granting the stay of arrest; however, if the petitioner is found to be in custody in any other case, this order granting a stay of arrest will not be valid or enforceable and will be automatically recalled.

The petitioner is directed to join the investigation from 15th to 19th April 2025 at 10AM everyday and after that as and when required by the Investigator. The petitioner will be considered in deemed custody under Section 27 of the Indian Evidence Act, 1872, and Section 23 of BSA, 2023. Throughout the investigation, the petitioner shall not be subjected to third-degree methods, inappropriate language, inhumane treatment, and so on.

It is clarified that if the petitioner fails to join investigation, interim order shall stand recalled automatically.

List on 01.05.2025.

Let fresh status report be filed by the concerned investigator, as mentioned above, mentioning call details of petitioner, statement of account from where transactions are made and other connectivity of the petitioner with the co-accused and other evidence.

Petitioner is also permitted to file any additional affidavit, if he want to do so.”

10. Thereafter, fresh affidavit dated 11.05.2025 was filed and the evidence collected

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against the petitioner has been mentioned in the following paras, which reads as follows:-

“5. That it is submitted that as the petitioner Nadeem Ahmad has disclosed that his Bank account bearing No. 9948000100038662 with Punjab National Bank, Tehsil Rurki, District Haridwar, Uttarakhand was being used to transactions of drug proceeds; hence the bank account statement of the above said account for the period from 01.07.2022 to 01.07.2023 has been obtained and analyzed and it has been found that total Rs. 69,57, 400.97/- was credited and total amount Rs. 69,57,413.64/- was debited from this account during the aforesaid period. As per disclosure statement of the present petitioner Nadeem Ahmad, this account was being used by the co-accused Azeem Ali @ Azu for transactions of intoxicant tablets. The account statement in vernacular is annexed herewith as Annexure R-2 for kind perusal of this Hon'ble Court.

6. That so far as the call details record of mobile phone of the present petitioner Nadeem Ahmad with other co-accused person is concerned, it is submitted that the relevant period of the call details is more than 02 years; hence the same could not be obtained as the service provider companies do not retain the record beyond 02 years.

7. That it is respectfully submitted that keeping in view the totality of the facts and submissions made hereinabove as well as the facts which were submitted in the previous status report filed before this Hon'ble Court, it is evident that the present petitioner Nadeem Ahmad along with co-accused persons was involved in drug peddling. The present petitioner Nadeem Ahmed was nominated on the basis of disclosure statements suffered by co-accused Nishan Sharma and Usman Rajpur as the accused Nishan Sharma had disclosed that he used to purchase intoxicant tablets from the present petitioner Nadeem Ahmed and co-accused Usman Rajput had disclosed that he used to sell intoxicant tablets and capsules to the present petitioner Nadeem Ahmed. The 29,920/- intoxicating tablets recovered from the co-accused Nishan Sharma were purchased from the present petitioner Nadeem Ahmed and the present petitioner Nadeem Ahmed used to sell intoxicating tablets/capsules to other persons also, which was disclosed by both the co-accused Nishan Sharma and Usman Rajput. Moreover, now the present petitioner Nadeem Ahmad has himself suffered a volunteer disclosure statement that he was supplying intoxicant tablets of the co-accused Azeem Ali @ Azu for which Azim Ali @ Azu used to pay him money and the bank account of the present petitioner Nadeem Ahmad was being used to transactions of drug proceeds. The present petitioner

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himself has admitted that he was working as a care taker at the gym of the co-accused Azeem Ali @ Azu, whereas a large number of transactions of huge amount i.e. more than 65 Lac have been made in his bank account. As such, the custodial interrogation of the petitioner Nadeem Ahmad is required for fair and proper investigation and in order to trace out those other persons, to whom he used to sell intoxicating tablets/capsules in Punjab. The recovery of contraband made in this case is of commercial quantity and drug money has been recovered from the co-accused, hence, rigorous of Section 37 (i) (b) of NDPS Act are applicable in this case. The present case is pending for trial before the Court of learned Additional Sessions Judge, Amritsar, fresh charge is yet to be framed and the next date is fixed for 30.04.2025 before the learned trial Court, As such, the present petitioner is not entitled to the discretionary relief of anticipatory bail. Therefore the present petition is liable to be dismissed.”

11. Only evidence collected so far is in the shape of disclosure statement. Bank transactions which are in the account of petitioner are concerned, as per petitioner his account was used by co-accused Azeem Ali, as such, no purpose would be achieved by sending the petitioner in custody simply because that quantity is commercial and Section 37 of NDPS Act is applicable.

12. 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 put in place by the Legislature under Section 37 of the NDPS Act.

13. For now, the petitioner has prima facie satisfied the first condition of section 37 of the NDPS Act to make a case for bail. Regarding the second rider of S. 37, this court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offense.

14. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the

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accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[30]. From the summary of the law relating to rigors of S.37 of NDPS Act, while granting bail involving commercial quantities, the following fundamental principles emerge:

(a). In case of inconsistency, S. 37 of the NDPS Act prevails over S. 439 CrPC. [Narcotics Control Bureau v Kishan Lal, 1991 (1) SCC 705, Para 6].

(b). The limitations on granting of bail come in only when the question of granting bail arises on merits. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(c). The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(d). In case the Court proposes to grant bail, two conditions are to be mandatorily satisfied in addition to the standard requirements under the provisions of the CrPC or any other enactment. [Union of India v. Niyazuddin SK &Anr, **2017:INSC:686 [Para 7]**, (2018) 13 SCC 738, Para 7].

(e). Apart from granting opportunity to the Public Prosecutor, the other twin conditions which really have relevance are the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. [N.R. Mon v. Md. Nasimuddin, (2008) 6 SCC 721, Para 9].

(f). The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds, considering substantial probable causes for believing and justifying that the accused is not guilty of the alleged offence. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(g). The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [State of Kerala v. Rajesh, **2020:INSC:88 [Para 21]**, AIR 2020 SC 721, Para 21].

(h). Twin conditions of S. 37 are cumulative and not alternative. [Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549, Para 7].

(i). At the bail stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed an offence under the NDPS Act and further that he is not likely to commit an offence under the said Act while on bail. [Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Para 14].

(j). If the statements of the prosecution witnesses are believed, then they would not result in a conviction. [Babua v. State of Orissa, (2001) 2 SCC 566, Para 3].

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(k). Merely recording the submissions of the parties does not amount to an indication of a judicial mind or a judicious application of mind. [UOI v. Prateek Shukla, **2021:INSC:165 [Para 11]**, (2021) 5 SCC 430, Para 12].

(l). Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise. [Union of India v. Sanjeev v. Deshpande, (2014) 13 SCC 1, Para 5].

(m). While considering the application for bail concerning Section 37, the Court is not called upon to record a finding of not guilty. [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, Para 11].

(n). The confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act. [Tofan Singh v. State of Tamil Nadu, **2020:INSC:620**, (2021) 4 SCC 1]

(o). In the absence of clarity on the quantitative analysis of the samples from the laboratory, the prosecution cannot be heard to state at this preliminary stage that the accused possessed a commercial quantity of psychotropic substances as contemplated under the NDPS Act. [Bharat Chaudhary v. Union of India **2021:INSC:877 [Para 11]**, 2021 SCC OnLine SC 1235, Para 10].

(p). When there is evidence of conscious possession of commercial quantity of psychotropic substances, such accused is not entitled to bail given Section 37 of the Act as contemplated under the NDPS Act. [State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta, **2022:INSC:26 [Para 11]**, 2022 SCC OnLine SC 47, Para 12].

(p). Bail must be subject to stringent conditions. [Sujit Tiwari v. State of Gujarat, **2020:INSC:101 [Para 12]**, 2020 SCC Online SC 84, Para 12].

[31]. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

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

16. 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.

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CONDITIONS:

17. 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.

18. 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.

19. 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)	

20. 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. 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.

21. 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.

22. 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,

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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.

23. 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."

24. 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.

25. 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."

26. **This bail is conditional, and the foundational condition is that if the petitioner repeats the offence, indulge himself in the offence where weight of the drug is more than 50% of intermediate quantity or the offence where quantity is commercial and also the offence which falls under Sections 19/24/27A of NDPS Act and if he does so, the State shall file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.**

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

28. 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.

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

(ANOOP CHITKARA)
JUDGE

16.07.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.