

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20224-2025
Reserved on: 07.07.2025
Pronounced on: 17.07.2025

Mukesh Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Raj Kumar Gupta, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
9	27.01.2024	Dehlon, District Ludhiana	15, 25 & 29 ofNDPS c

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 14 of the bail petition, the accused declares no criminal antecedents. The reply and the custody certificate do not contradict it.
3. The facts and allegations are taken from the reply filed by the State. On 27.01.2024, based on secret information, police raided at a truck standing at Bandarh Road, Village Lehra, but on seeing the police party, two persons ran away from the spot but one person named Jammu Singh was apprehended. The persons who ran away were Soni and driver of the truck. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. From the said truck, police recovered 10 quintals of poppy husk. Thereafter, during the investigation, a secret information was received that the above said truck belongs to and was being driven by the present petitioner. Accordingly petitioner was nominated as an accused and was arrested from on 30.01.2024, when the petitioner and his co-accused/Hoshiar Singh were going in a car. The Police seized one quintal of poppy husk from the said car in which petitioner and his co-accused were travelling.
4. Petitioner seeks bail on the ground of pre-trial custody. 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 petitioner's counsel 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 Special Judge or Sessions Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and may do 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. 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.

8. However, the petitioner is entitled to bail because Hon'ble Supreme Court had granted bail on prolonged custody in the following judicial precedents:

9. In *Shambhulal Gurjar v. State of Rajasthan*, Decided on 23-04-2024, SLP (Crl) 16671-2024, Hon'ble Supreme Court holds,

The allegation against the petitioner is that there is a recovery of 60 kgs of poppy husk/straw (contraband article) from him and prior to this incident, he has three criminal antecedents relating to the NDPS Act registered in the year 2019, 2021 & 2022. The third bail application of the petitioner was dismissed by the High Court. He has already undergone about 1 year and 8 months in jail.

Heard learned counsel for the petitioner and the respondent State.

Considering the fact that the contraband article is a poppy straw although he has three criminal antecedents but since he has been in jail for the last 1 year and 8 months, we are of the opinion that a case of bail is made out for the petitioner.

10. Per the custody certificate dated 06.07.2025, the petitioner is in custody for 01 year, 05 months & 01 day in this FIR.

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. In Tajmul SK v. The State of West Bengal, decided on 23 Jul 2024, CrA 3047-2024, Hon’ble Supreme Court holds,

[5]. We are inclined to set aside the impugned order only on the premise that right to speedy trial is a fundamental right. Despite the fact that the appellant has been under incarceration for more than one and a half years, the trial is yet to start, though, it is submitted by learned counsel appearing for the State that charges have been framed. Suffice it is to state that trial would take considerable length of time. There is no antecedent involving the appellant.

[6]. Accordingly, the impugned order is set aside and the appellant is granted bail, subject to the conditions that may be imposed by the Trial Court.

13. Considering the quantity involved and the pre-trial custody, Section 37 of the NDPS Act would be attracted.

14. Given the above, the petitioner’s pretrial custody is more than some of the judicial precedents mentioned above; the petitioner is entitled to bail under Article 14 of the Constitution of India.

15. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

16. 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.

CONDITIONS:

17. 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 Ilaqa Magistrate/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.

18. 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)	

¹ Supreme Court of India, in Rabi Prakash v. The State of Odisha, SLP (Crl) 4169-2023, Para 4, decided on 13 July 2023

19. This order is subject to the petitioner's complying with the following terms.

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 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.

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 *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."

24. 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 Special Judge/ Sessions 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.

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

26. 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.

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

(ANOOP CHITKARA)
JUDGE

17.07.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.