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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20855-2025
Reserved on: 16.07.2025
Pronounced on: 29.07.2025

Amit Sharma ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Raghav Chadha, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
22	02.03.2024	Division No.3, District Jalandhar	18, 25, 29, 27A-61-85 of NDPS Act

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 paragraph 20 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 02.03.2024, based on chance recovery, the Police seized 02 kg opium from accused Sunny Jagga’s possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. During custodial interrogation, the main accused-Sunny Jagga confessed before the Police officer that he along with his brother Mani Kumar, cousin brother Pawan Kumar and Nishant Bhagat used to send opium to abroad under the garb of parcels. He also disclosed that Amandeep, Sunil Kumar and Harmanpreet used to supply opium to them and where they were to supply the opium, was told to them by Suraj and Amandeep and for clearing the courier, Nishat Bhagat used to give money to Parmod. Based on this disclosure statement, the above said persons were nominated as accused in the present case vide DDR No.47 dated 02.03.2024. Out of these seven nominated persons, one

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Parmod was arrested on 03.03.2024 and made the following statement:-

“I am working at ITO Mata Sundari Road, Delhi near Foreign Post Office for dispatching the parcels. Pawan Kumar son of Jagdish Kumar resident of House No. 3483, Bhargo Camp, Jalandhar, Mani Kumar son of Harish Chandra resident of C-61, Leather Complex Road, New Rajan Nagar, Jalandhar, Sushil Kumar alias Suraj son of Ramesh Kumar resident of Mohalla Gobind Nagar, Darapur Bypass Tanda, District Hoshiarpur, who are doing the business of supplying opium through courier to Canada, America, England, Australia, New Zealand, etc. They took my help to forward their courier parcels from Delhi. They used to tell me that their courier parcels are coming, so I immediately contact the employees of customs department Rukesh Sharma, Amit Sharma (present petitioner), Rahul Jain, Pushpinder in Foreign Post Office, ITO Mata Sundari Road, Delhi. The said persons used to pass the parcels from Delhi Airport. For this purpose, Pawan, Amandeep and Sushil Kumar used to give money through UPI and I kept my share and gave rest of the amount to employees of customs department. In this way, our business runs smoothly without any hindrance and we get handsome income.”

5. Apprehending arrest, the petitioner filed for anticipatory bail before the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

6. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that 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 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.

7. Counsel for the petitioner further submits that petitioner is a government employee and he is honest and to prove his bonafide, he handed over affidavit declaring all his assets to State to verify the same, pursuant to his undertaking given to this Court.

8. The State's counsel opposes bail and refers to the reply.

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

“D. The role of the petitioner:

The role of the petitioner is that accused Munish Kumar alias Mani Thakur who currently lives abroad in England and he used to supply opium from Jharkhand to Sunil Kumar alias Suraj Kumar r/o Bobby Nagar, Tanda. Then Sunil Kumar alias Suraj, Pawan Kumar, Nishant Bhagat, Sunny Jagga and Sikandar used to supply the same through courier service to Parmod Kumar. Parmod Kumar used to clear the parcels at Airport with the assailants of Rupesh Sharma, Amit Sharma (present petitioner), Rahul Jain and Pushpinder, who were working in Custom Department and their posting was at Foreign Post Office, near ITO, Mata Sundari Road, Delhi. The parcels containing opium which put in laddo sweet box, was supplied to the addressee disclosed by Manish Kumar alias Manni Thakur. Thus, the present petitioner was actively involved in business of drug trafficking which they supplied from India to Canada, America, England, Australia, New Zealand, etc. and the present petitioner used to take money from the co-accused Parmod Kumar in cash.”

REASONING:

10. 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.

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

12. 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.

13. Petitioner was posted at the relevant time in Foreign Post Office in Delhi and

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allegations against him are that they used to clear the parcel containing drug/contraband to send the same at the given address on asking of the co-accused. FIR relates to the months of March 2024. Evidence is only in the shape of disclosure statement, as such, petitioner is entitled for protection. 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.

14. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible.

15. 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.

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, subject to compliance with the terms and conditions mentioned in this order.

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

21. The petitioner is directed to join the investigation as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian

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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.

22. 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.

23. 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 the uploading of this order on the official webpage of this Court 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 it is 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.

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

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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, with the foundational condition being 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, or violates S. 19, or 24, or 27-A of the NDPS Act, 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.

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

29.07.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.