

CRM-M-27406-2025
Date of Decision: 23.05.2025

...Respondent

FIR No.	Dated	Police Station	Sections
12	06.01.2025	Bhondsi, District Gurugram	20 (b) (ii) (b) of NDPS Act (Section 111(2), 61(2) of BNS, 2023 added later on)

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 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the order dated 26.03.2025 passed by Learned Additional Sessions Judge, Gurugram, whereby bail of petitioner was rejected. On 06.01.2025, based on prior secret information, the Police seized 05 kg 50 grams of ganja from the possession of petitioner. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.
4. The petitioner's counsel seeks bail on the grounds of prolonged pretrial 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 State's counsel opposes bail on instructions.

**REASONING:**

6. As per order dated 26.03.2025 passed by learned Additional Sessions Judge, Gurugram, the weight and name of drug is 05 kg 50 grams of ganja.

7. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity 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.

8. The petitioner is entitled to bail because for the same drug, and when the quantity involved was either more or closer to the quantity seized in the present FIR, the Hon'ble Supreme Court has granted bail on prolonged custody in the following judicial precedent:

9. In Rajesh v. The State of Haryana, decided on 20-11-2024, SLP (Crl) 14037-2024, Hon'ble Supreme Court holds,

10. The petitioner is an accused in a case bearing FIR No.67 dated 25.01.2024 registered with Police Station Majesar, District Faridabad, Haryana for the offences punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter called "NDPS"). The allegation against the petitioner is that there is a alleged recovery of 1.200 kgs of ganja (contraband article) from him. The bail application of the petitioner was dismissed by the High Court. He has already undergone about 10 months in jail. Being aggrieved, he approached this Court.

11. Heard learned counsel for the petitioner and the respondent State.

12. The bail has not been granted by the High Court only for the reason that the petitioner is a habitual offender. Although, the contention of the learned counsel for the petitioner is that out of four cases, there is only one case of NDPS against the petitioner and the remaining cases (three in number) relate to Excise Act and not of NDPS.

13. Under these circumstances, considering the quantity of the contraband article and the period of incarceration of the petitioner, we are of the opinion that a case of bail is made out for the petitioner.

14. As per para 07 of the bail petition, petitioner is in custody in the present FIR since 06.01.2025.

15. 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.

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

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 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.

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)

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

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



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 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."

23. 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."

24. *This bail is conditional, and the foundational condition is that if the petitioner 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, 24, or 27-A of the NDPS Act, then the State shall apply for cancellation of this bail before the Trial Court, which shall be eligible, authorized, and shall have the discretion to 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 is not required for furnishing bonds. An Advocate for the Petitioner can download the order from the Court's official web page and attest it as a true copy. If needed, the attesting officer can verify its authenticity online and use the downloaded copy to attest bonds.



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

(ANOOP CHITKARA)
JUDGE

23.05.2025

Jyoti-II

Whether speaking/reasoned: Yes

Whether reportable: No.