



CRM-M-23734-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 14.05.2025

Mohamad Ali @ Maddi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jagdish Singh Mahal, Advocate,
for the petitioner.

Mr. Sukhwinder Singh Rai, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
82	21.03.2025	Civil Lines, Batala, Police District Batala, District Gurdaspur	21, 27(a), 61 of NDPS Act and Section 111 of BNS, 2023

1. The petitioner incarcerated for recovery of 13 grams heroin and Rs.570/- termed as drug money by the Police, has come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 9 of the bail petition, the accused declares that he has no criminal antecedents. However, as per paragraph 6 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	10	21.02.2025	333, 324(4), 191(3), 115(2), 190 of BNS	Ghanie Ke Banger

3. The facts and allegations are taken from the reply filed by the State. On 21.03.2025, based on a chance recovery, the Police seized 13 grams of heroin from the petitioner's possession. In addition to the heroin, the police also recovered Rs.570/- from the petitioner's possession, which the police termed as drug money, and based on such self-declaration, inserted S. 27-A along with S. 21 of the NDPS Act also involved Section 111 of BNS (organised crime). The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.
4. Counsel for the petitioner on instructions submits that petitioner shall not indulge himself in the offence involving the commercial or 50 % of intermediate quantity or the offence which falls under Sections 19/24/27-A of NDPS Act. He further submits that if the petitioner involves himself in the said offence, he has no objection if the State files



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application of cancellation of bail in all FIRs under NDPS Act, pending against the petitioner. He further contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

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

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

“6. xxx xxx

The evidence against the petitioner

The present FIR was registered against the accused/petitioner by name.

The role of the petitioner

On 21.03.2025 when the police party of P.S. Civil Lines, Batala apprehended the petitioner/accused, while on patrolling duty who tried to sneak away after seeing the presence of police party. Thereafter, upon serving notice under Section 50 of NDPS Act, one polythene pouch was recovered from his possession which contained 13 gram heroin. Apart from the heroin, amount of Rs.570/- was also recovered from his possession.”

REASONING:

7. Given the quantity involved, the rigors of S. 37 of the NDPS Act do not apply regarding recovery of heroin. As concerned for the Section 111 BNS, there is nothing on record to show that he was a member of syndicate involved in drug.

8. 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.

9. However, the police claim that in addition to the heroin, the police had also recovered Rs. 570/-. To understand the facts that led to the recovery of money, it shall be relevant to read FIR, whose translated copy is annexed with the bail petition as Annexure P-1, which reads as follows:

“Station House Officer Civil Line Batala, Jai Hind, today I ASI



alongwith ASI Savinder Singh 2984, ASI Jaswant Singh 3282, PHG Harbhagh Singh 2477 alongwith investigation kit alongwith laptop and printer on private vehicle in the search of suspected persons were going from Qadian Chunki to Amarpura Chowk, Bode Di Khuhi. While patrolling when police party was going aside canal bridge then one hair cut boy was seen coming from Canal side and on seeing police party sat in a vacant plot. Who was apprehended by me ASI with the help of companions and under suspicion and asked his name who told his name as Mohammad Ali @ Madi son of Mahammad Bashir resident of Shahchur Kull at present near Dera Baba Darshan Dass, Bypass Jalandhar Batala. Upon which I ASI said to accused Mohammad Ali @ Madi abovesaid that I suspect that you have some intoxicant material but you have legal right to get your search conducted from Magistrate or Gazetted Officer who can be called at spot or you can be taken to them. Who said that he has full faith and you can conduct search. Upon which memo of consent was prepared and before conducting search at spot I ASI tried to join 4/5 public witness but no one agreed to join police party. Seeing no option I ASI in the presence of companions conducted search of accused Mohammad Ali @ Madi abovesaid. Then one polythene bag was recovered from the upper pocket of shirt worn by Mohammad Ali @ Madi abovesaid and from the side pocket of shirt Rs.570/- were recovered and when asked that from where this money came, he told that this is earned by selling heroin today. When accused Mohammad Ali @ Madi abovesaid asked that what is in the recovered polythene bag who told that there is heroin in the recovered polythene bag and on opening when checked heroin was recovered and after getting weighing scale from investigating kit and upon weighing same came to the 13 grams heroin alongwith polythene bag. Plastic box parcel was prepared and stamp PM was affixed and recovered Rs.570/- Indian currency drug money was put in polythene by me ASI and stamp PM and sample stamp was prepared and for further use stamp was handed over to ASI Savinder Singh 2984/Batala and recovered 13 grams heroin and Rs.570/-drug money was taken into police possession vide different memos. Accused Mohammad Ali @ Maddi has committed offence under section 21, 27(A)-61-85 of NDPS Act and 111 of BNS by keeping in possession 13 gram heroin in polytheen and Rs.570/- drug money. To register FIR ruqa is being sent by hand through PHG Harbhagh Singh 2477 to Police Station. Number be informed after registration of FIR. Special reports be issued in the service of Hon'ble Illaqa Magistrate and Officers. Control room be informed through



wireless. I ASI alongwith companions is busy at the spot for investigation.”

10. Thus, the money was not even recovered along with the contraband but from the same was recovered from the side pocket of the shirt of the petitioner. The police had no evidence to term such money as drug money, and forgetting the statutory mandate of S. 23 (1) and (2) of BSA, 2023, invoked the stringent penal provision of S. 27-A just to trigger the legislative restrictions placed on bail through S. 37 of NDPS Act. In such a background, S. 37 of the NDPS Act shall neither attract in law nor through its inclusion in the FIR.

11. S. 27A of the NDPS Act reads as follows:

27A. Punishment for financing illicit traffic and harbouring offenders.—Whoever indulges in financing, directly or indirectly, any, of the activities specified in sub-clauses (i) to (v) of 3[clause (viii**b**) of section 2] or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

12. At the stage of invocation of S. 27A, there was no *prima facie* evidence of financing, directly or indirectly. Thus, the rigors of S. 37 of the NDPS Act shall also not attract.

13. 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.

14. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient *prima facie* evidence connecting the petitioner with the alleged crime of recovery of heroin. However, given the quantity of 13 grams of heroin, it is not a case where bail should be denied. However, as per paragraph 4 of the bail petition, the petitioner has been in custody since 21.03.2025. As per the custody certificate dated 13.05.2025, the petitioner’s total custody in this FIR is 01 month and 21 days.

15. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the *prima facie* analysis of the nature of allegations and the other factors peculiar to this case,

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



there would be no justifiability for 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)	

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



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the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

22. ***This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.***

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

24. 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.

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

(ANOOP CHITKARA)
JUDGE

14.05.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.