

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-24911-2025
Reserved on: 01.08.2025
Pronounced on: 27.08.2025

Parkash @ Bhagta @ Langra ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Anshuman Dalal, Advocate
for the petitioner.

Ms. Shaveta Sanghi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
25	14.02.2025	Lakhan Majra, Rohtak	20(b) (ii) (c) and 29 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. Per paragraph 4(g) of the bail application and 8 of the status report dated 03.07.2025, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	213	18.06.2023	20 of NDPS Act	Julana, District Jind

3. The facts and allegations are taken from the status report filed by the State. On 13.02.2025, based on secret information, the Police seized 01 kg 403 grams of charas from co-accused's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.

4. During custodial interrogation, the main accused, Vikram, confessed before the Police officer that they had purchased the drugs from the petitioner. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

5. 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.
6. The State's counsel opposes bail and refers to the status report.
7. It would be appropriate to refer to the following portions of the status report, which read as follows:

“2. That aforesaid FIR was registered at Police Station Lakhan Majra Distt.-Rohtak consequent upon recovery of 1Kg. 403 Gram Charas from possession of co-accused of petitioner namely Vikram s/o Dalu Village Dorar Distt. Jind by Anti-Narcotics Cell Rohtak. During personal search of accused mobile phone Marka Ital. bearing SIM No. 9050533080 was recovered from his possession. Mobile phone as well as the recovered Narcotic Substance were taken into police possession.

7. That in compliance of order dated 14.05.2025 passed by this Hon'ble High Court the petitioner has been joined in interrogated and questionnaire were investigation in this case on 26/5/2025. During investigation the petitioner prepared accordingly. The petitioner has admitted about his conscious possession of aforesaid narcotic substance and his indulgence in commission of crime. During investigation Mobile phone Marka Itel bearing SIM No.7206635713 was produced by the petitioner. However, the petitioner did not co-operate in the investigation and did not got recover of amount of Rs.25,000/- i.e. partial amount of Narcotic Substance sold to Vikram. The petitioner did not disclose the name of other culprits to whom he has supplied the narcotic substance and from where he used to collect the narcotic substance further custody of the petitioner is required for conducting thorough investigation. Therefore, the custodial interrogation of petitioner is required to know the name of other persons to whom he used to sell narcotic substance. The recovery of an amount of Rs.25,000/- is to be effected from the petitioner which he earned from the co-accused Vikram by selling the narcotic substance.”

REASONING:

8. As per paragraph 02 of the status report, the name of the contraband is charas and its weight is 01 kg 403 grams, and it constitutes an offense under the following provisions and notifications:

Substance Name	Cannabis and cannabis resin/ Charas/ Hashish/ Sulpha
Quantity detained	1403 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	140.30%

Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and

	Commercial)
Punishable U/s	S.20(b)(ii)C of NDPS Act, 1985

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
Sr. No.	23	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Cannabis and cannabis resin	
Other non-proprietary name	CHARAS, HASHISH	
Chemical Name	EXTRACTS and TINCTURES OF CANNABIS	
Small Quantity	< 100 Gram	
Commercial Quantity	> 1000 Gram	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.20 & S.2(iii) NDPS Act, S.O.821(E)	11/14/1985

Sr. No.	S.2(iii)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(iii) “cannabis (hemp)” means— (a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish; (b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and (c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom; (iv) “cannabis plant” means any plant of the genus cannabis; S. 2(viii b)] “illicit

	traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;
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9. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act.

10. It would be appropriate to refer to the following portions of the status report, which read as follows:

“5. That during investigation call detail and location chart of aforesaid mobile number of petitioner and his aforesaid co-accused were obtain from concerned nodal agency. As per call detail records of aforesaid mobiles it is transpired that prior to aforesaid recovery of Narcotic Substance there are multiple telephonic call between the petitioner and his co-accused namely Jasbir @ Jassu (Brother of the petitioner) and Vikram. It is further submitted that on and prior to 11.02.2025 there were multiple times mobile call between petitioner and his both the co-accused. Further, location chart of all the mobiles in the area of village Dorar. It is pertinent to mention here it has come during investigation that mobile No. 9050533080 used by co-accused Vikram is registered in the name of Ajay son of mobile No.9817734702 used by accused accused Vikram, Jasbir@Jassu is registered in the name of Ashish son of accused Jasbir @Jassu and mobile No.7206635713 used by accused Prakash Petitioner is registered in the name of Ashish son of accused Jasbir @Jassu (brother of petitioner), (True copy of the CAF, CDR & location chart are annexed herewith as Annexure R-3.”

11. In State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991, wherein the Hon’ble Supreme Court holds,

- [8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.
- [9]. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

12. The quantity of heroin that was seized falls in the commercial category. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and is not likely to commit any offence while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offence punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

13. The State's counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

14. 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 exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. 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 them 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

¹ **37. Offences to be cognizable and non-bailable.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

guilty of such an offense and is not likely to commit any offense while on bail. If either of these 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 the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody.

15. The quantity involved is commercial, and the burden to satisfy the rigor of condition of Section 37 of the NDPS Act was on the petitioner, which he did not discharge to the satisfaction of the statutory requirements. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for anticipatory bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

16. The learned Special Judge, while dismissing the anticipatory bail of the petitioner, has given elaborative reasons and considered almost every aspect.

17. The grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act.

18. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon’ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union of India v. Padam Narain Aggarwal* (2008) 13 SCC 305].

19. A perusal of the bail petition and the documents attached prima facie points towards the petitioner’s involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

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21. **Petition dismissed.** Interim orders are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

27.08.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.