

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27201-2025
Reserved on: 09.07.2025
Pronounced on: 24.07.2025

Dharminder Singh @ Fauji ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhinav Prashar, Advocate for
Mr. J.S. Sandhu, Advocate, for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
144	30.08.2021	Sadar Ferozepur, District Ferozepur Punjab	21 of NDPS Act

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 para 13 of the bail application and as per paragraph 8 E of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	142	28.08.2021	21, 29 of NDPS Act	Mehana, Distt. Moga
2.	112	28.06.2019	21/61/85 of NDPS Act	Dharamkot
3.	63	26.04.2024	174-A IPC	Sadar Ferozepur

3. The facts and allegations are taken from the reply filed by the State. On 30.08.2021, the police had arrested the petitioner with 10 grams of heroin. After the arrest, he was interrogated and on 01.09.2021, the petitioner made a disclosure statement about smuggling of heroin and based on such disclosure statement, the investigator was able to recover 270 grams of heroin. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. The petitioner's counsel submits that the initial recovery was only of 10 grams which is intermediate quantity on lower side and later recovery of 270 grams of heroin is in violation of Article 20(3) of the Constitution of India, as such, his arrest itself is illegal in that point and the petitioner is entitled to bail.

5. State counsel opposes said argument and submits that on the statement of the petitioner, the police had recovered material object i.e. heroin which was of commercial

quantity, as such, it is legally admissible.

6. 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 his family.

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

“8. xxx xxx

C. The evidence against the petitioner.

There is sufficient evidence of prosecution witnesses such as Investigating Officer as well as recovery witnesses against the petitioner.

D. The role of the petitioner.

So far as the role of the petitioner is concerned, upto investigation and past criminal antecedents of the petitioner duly proves that the petitioner is involved in smuggling of heroin and moreover recovery of 280 grams of heroin was effected.”

REASONING:

8. Since the quantity is commercial, the burden was on the petitioner to explain the same which he did not do satisfactorily. This Court is in *prima facie* agreement with the objection raised by State counsel and is of the considered view that, on the face of it, it is not a case of violation of Article 20(3) of the Constitution of India and it is not a case where the recovery cannot be considered and heroin has to be considered as a material object. It is clarified that this question shall not be construed on merits by the trial Court but the petitioner is not entitled to bail on this ground. The next argument is violation of Sections 42, 50 and 52 of the NDPS Act. In the present case, commercial quantity was recovered based on interrogation, as such, the stand of the petitioner of complying of Section 42 of the NDPS Act is debatable. However, this Court does not deem it appropriate to deal with the finding about compliance of Section 42 of NDPS Act, in a case where the police during interrogation recovers further contraband based on the information received in such investigation.

9. 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.

10. 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:

11. In *Sabat Mehtab Khan v. The State of Maharashtra*, decided on 03 Sep 2024, SLP (Crl) 8557-2024, Hon'ble Supreme Court holds,

The petitioner is an accused for the offences punishable under Sections 21(c) and 29 of the of the Narcotic Drugs and Psychotropic Substances Act and allegation is that 275 gms. and 50.01 gms of heroine has been recovered from him. His regular bail application was dismissed by the High Court. He has already undergone about 1 year six months in jail.

Heard learned senior counsel/counsel for the parties.

Considering the quantity of the contraband articles and the period of his incarceration, we are of the opinion that a case of bail is made out for the petitioner.

12. In Ramlal v. The State of Rajasthan, decided on 17 Sep 2024, SLP (CrI) 9510-2024, wherein Hon'ble Supreme Court granted bail to a first offender after one year and six months of custody who possessed 450 grams of smack (Heroin), and the holds as follows:

The petitioner and the other accused persons are accused for the offences punishable under Sections 8/21 & 8/29 of the Narcotic Drugs and Psychotropic Substances Act and allegation is that 450 gram of smack has been recovered from them. The bail application of the petitioner was dismissed by the High Court. Hence, he approached this Court. He has already undergone about 1 year and 6 months in jail.

Heard learned counsel for the petitioner. As per office report dated 13.09.2024, the service is deemed complete on the sole respondent-State but no one has appeared for the State.

Considering the period of incarceration of the petitioner and the fact that the petitioner has no criminal antecedents, we are of the opinion that a case of bail is made out for the petitioner.

13. As per the custody certificate dated 08.07.2025, the petitioner is in custody for 01 year, 02 months and 11 days in this FIR.

14. The petitioner's custody of around 1 year and 03 months, further, the fact that the petitioner's counsel has given an undertaking not to repeat the offence, as an exceptional case, petitioner has made out a case for bail.

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. Considering the quantity involved and the pre-trial custody, Section 37 of the NDPS Act would not be attracted. Given this, the criminal antecedents are also not a legal ground for denying the rigors of S. 37 of the NDPS Act at this stage.

17. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the

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

prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

18. 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:

19. 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.

20. 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)	

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

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 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.

24. 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."

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 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, 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 Trial Court, which shall be at liberty to 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

24.07.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.