

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28738-2025
Reserved on: 09.07.2025
Pronounced on: 29.07.2025

Prem Singh @ Kala Pehalwan ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. L.S. Sekhon, Advocate and
Mr. Parshant, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
60	25.05.2023	Jhabal, District Tarn Taran	21-C & 29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC (483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS]), seeking regular bail.
2. In para 11 of the petition, petitioner declares that he has no criminal history.
3. The facts and allegations are taken from the reply filed by the State. On 25.05.2023 based on a chance recovery, the Police seized 500 grams of heroin from the petitioner's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody.
5. 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. 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.

6. The State’s counsel opposes bail and refers to the reply.

REASONING:

7. As per para 10 of reply, the weight of drug is 500 grams and it contains heroin (Diacetylmorphine).

8. Dealing with this contraband is an offence under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
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<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
<i>Notification No. & date</i>	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)

<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
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Sr. No.	56	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Heroin	
Other non-proprietary name	*****	
Chemical Name	Diacetylmorphine	
Small Quantity	<=5 Gram	
Commercial Quantity	>250 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.(xvi)(d) NDPS Act, 1985 (61 of 1985), S.O. 821 (E)	11/14/1985

Sr. No.	2(xvi)(d)
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Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	2(xvi)(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; Explanation.-- For the purposes of clauses (v) (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one mililitre of substance, if liquid, is contained in every one hundred mililitre of the preparation and so on in proportion for any greater or less percentage: Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

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 set forth 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 (Crl) 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. Per the custody certificate dated 08.07.2025 the petitioner's custody in this FIR is of 02 years, 01 months & 10 days.

14. 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.

15. 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, absence of criminal antecedents relating to 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.

CONDITIONS:

16. 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 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.

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

17. 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)

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

19. 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.

20. 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.

21. 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.”

22. 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."

23. The significant consideration for granting bail is that the Court aims to give the petitioner another chance to course-correct, reform, and reintegrate into the community as an ideal citizen. To ensure that the petitioner also abides by the assurance made on the petitioner's behalf by not repeating the offence or indulging in any crime, it shall be desirable to impose the following additional condition.

24. This bail is conditional, with the foundational condition being that if the petitioner repeats the offense where the quantity involved is more than half of the intermediate, or commercial, or violates S. 19, 24, or 27-A of the NDPS Act, or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, 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.

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

29.07.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.