

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32025-2025 (O&M)
Reserved on: 07.07.2025
Pronounced on: 16.07.2025

Damanjit Singh @ Kaka
.....Petitioner(s)
Versus
State of Punjab
.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Pathania, Advocate
for the petitioner(s)

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J. (Oral)

FIR No.	Dated	Police Station	Sections
10	1.3.2025	Taragarh, District Pathankot	21, 27(a), 61-85 NDPS Act and Sections 29 NDPS & 111 BNS (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. Per paragraph 10 of the bail petition, the petitioner declares that he has no criminal antecedents, except the following:-

S.No	FIR No.	Dated	Police Station	Sections
1.	7	6.2.2025	Taragarh, Pathankot	303(2) BNS.
2.	18	2.3.2021	Divn.No.1, Pathankot	21-61-85 NDPS Act
3.	83	14.11.22	Taragarh, Pathankot	21-61-85 NDPS Act
4.	35	11.3.23	Sadar, Pathankot	21-61-85 NDPS Act
5.	117	13.11.21	Taragarh, Pathankot	379B(2), 397 IPC read with Section 25-54-59 Arms Act

3. The facts and allegations are taken from the status report dated 6.7.2025 filed by the State, which reads as under:

“Brief facts as per the FIR:

That on dated 01.03.2025, ASI Ram Lal No 1297 along with police party in

connection with FIR No.07 dated 06.02.2025. under section 303 (2) BNS PS Taragarh, were going to arrest the present petitioner Damanjit Singh alias Kala S/o Jarnail Singh, who was nominated in the aforesaid case. When the police party reached the metttled road of New Parmanand and the road leading to village Lahri Gujran little behind of railway crossing then in the lights of government vehicle one young person was seen coming from New Parmanand rallway crossing on a motor cycle without number plate make -Hero Honda Splendor, who stopped on seeing the police party and tried to turn back his motor cycle and then he threw a envelope from the right pocket of his jacket which was heavy and on suspicion the young person was apprehended along with motor cycle and he disclosed his name as Damanjit son of Karnail Singh and the search of envelope was done and on checking 10 gram Heroin and drug money of Rs.4200/- was recovered from the petitioner.”

4. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody. He has no objection to 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 and refers to the reply.

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

“D. Evidence against the petitioner and Role of the Petitioner:

That the contraband weighing 10 gram Heroin, drug money of Rs.4,200/-and one motor cycle without number has been recovered from the possession of petitioner-accused Damanjit Singh. Whereas, the contraband weighing 13 gram Heroin and drug money of Rs.1800/- was recovered from the conscious possession of co-accused Roshan Din. Moreover, several FIRs have been registered against the petitioner-accused. Further during interrogation, petitioner Damanjit has disclosed that the recovered Heroin was purchased by him from Roshan Din.”

REASONING:

7. Admittedly, the petitioner was found in possession of 10 grams of Heroin, which is non-commercial quantity along with drug money of Rs.4,200/-. However, the amount of Rs.4200/- cannot be called as drug money until it is proved by way of evidence. As per the custody certificate dated 16.6.2025, the custody of the petitioner is 3 Months and 13 days.

8. Given the quantity, the rigors of S. 37 of the NDPS Act do not apply in the present case. 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. 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.

10. 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. However, per paragraph 8 of the bail petition, the petitioner has been in custody since 01.03.2025. Per the custody certificate dated 16.06.2025, the petitioner’s total custody in this FIR is 03 months and 13 days. 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, there would be no justifiability further pre-trial incarceration at this stage.

11. 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. This order shall come into force from the time it is uploaded on the official webpage of this Court.

12. 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.

13. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

	ADHAR number	
	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
	Mobile number (If available)	
	E-Mail id (If available)	

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

15. 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,

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

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.

16. Given the background of allegations against the petitioner, it becomes paramount to protect the detection squad, members of society, 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.

17. 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."

18. 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."

19. **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.**

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.

21. 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.

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

(ANOOP CHITKARA)
JUDGE

16-07-2025
AK

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO