

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-32436-2025  
Reserved on: 23.07.2025  
Pronounced on: 31.07.2025

Vishal alias Pali...Petitioner

Versus

State of Punjab...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Shokeen Singh Verma, Advocate  
for the petitioner.

Mr. Jatin Kundu, AAG, Punjab.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                | Sections                                                                         |
|---------|------------|-------------------------------|----------------------------------------------------------------------------------|
| 29      | 17.04.2025 | Tibber, District<br>Gurdaspur | 21(b), 27(a) & 61 of NDPS<br>Act 1985 (Section 29 of<br>NDPS Act added later on) |

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, has come up before this Court under Section 483 BNSS 2023, seeking regular bail on the ground that the quantity of contraband is less than commercial and rigours of S. 37 of NDPS Act do not apply.
2. In paragraph 11 of the bail petition, the petitioner declares the following criminal antecedents:

| Sr. No. | FIR No. | Date       | Offences                     | Police Station             |
|---------|---------|------------|------------------------------|----------------------------|
| 1       | 63      | 24.09.2022 | 304 IPC                      | Tibber District Gurdaspur  |
| 2       | 34      | 26.05.2022 | 21(b)/61/85 of<br>NDPS Act   | Tibber, District Gurdaspur |
| 3       | 34      | 13.04.2023 | 21/29/27(a) of<br>NDPS Act   | Tibber, District Gurdaspur |
| 4       | 88      | 26.11.2023 | 21/27(a) & 61 of<br>NDPS Act | Tibber, District Gurdaspur |

3. The facts and allegations are taken from the copy of FIR, annexed with the petition as Annexure P-1. On April 17, 2025, based on chance recovery, the Police seized 10 grams of heroin from the possession of co-accused-Rachhpal Singh. In addition, Rs. 12,980/- in cash were also recovered, which as per the police is drug money. The Investigator claims to have complied with all the statutory requirements of the NDPS Act,

1985, and BNSS 2023. During the custodial interrogation of the co-accused-Rachhpal Singh, he disclosed the petitioner as the supplier of the drugs; based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.

4. 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.

5. The State's counsel opposes bail.

6. Rigors of S. 37 apply because of the recovery of drug money. However, there is no prima facie legally admissible evidence to lend credibility to such allegations and as such rigors of S. 37 are complied with and further amount is not so huge.

7. The quantity allegedly involved in this case is not commercial. Given this, the rigours of S. 37 of the NDPS Act do not apply in the present case.

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 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, which specify an offence, also 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 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. As per paragraph 6 of the bail petition, the petitioner has been in custody since 19.04.2025. 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 for further pre-trial incarceration at this stage.

10. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, it is insufficient for denying bail.

11. Given the penal provisions invoked, coupled with the prima facie analysis of the nature of allegations, quantity of contraband involved and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

12. Without commenting on the case's merits, in the facts and circumstances unique and peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail.

**CONDITIONS:**

13. 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 Ilaka 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.

14. 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)                                                                                                             |  |

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

16. 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.

17. Given the background of allegations against the petitioner, it becomes paramount to protect the 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.

18. 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."

19. 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."

20. 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.

21. 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 concerned 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.

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

23. 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.

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

(ANOOP CHITKARA)  
JUDGE

31.07.2025  
anju rani

Whether speaking/reasoned: Yes  
Whether reportable: No.