

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38939-2025
Reserved on: 01.09.2025
Pronounced on: 19.09.2025

Kusum ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Saini, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
23	06.03.2024	Sadar, Rajpura	20/61/85 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. Per paragraph 15 (i) of the bail application, the petitioner has no criminal antecedents.
3. The facts and allegations are taken from the short reply filed by the State. On 06.03.2024, based on a chance recovery, the Police seized 04 kg of charas from the possession of petitioner and co-accsed. 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 parity and 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.
6. The petitioner's counsel 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 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.

7. The State’s counsel opposes bail and refers to the short reply.
8. As per paragraph 4 of the short reply, the name of the contraband is Charas and its weight is 4 Kg.
9. Dealing in 4 Kg of Charas in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Cannabis and cannabis resin/ Charas/ Hashish/ Sulpha
Quantity detained	4 Kg
Punishable U/s	S.20(b)(ii)C of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	400.00%

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)

<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 (i.e. equivalent to 0.1 Kg)	
Commercial Quantity	> 1000 Gram (i.e. equivalent to 1 Kg)	

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;

10. 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.

11. Per the custody certificate dated 30.08.2025, the petitioner's custody in this FIR is 01 year 05 months and 22 days.

12. 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.

13. The petitioner is entitled to bail because, in somewhat similar cases where the quantity involved was either greater than or close to the amount seized in the current FIR, the Hon'ble Supreme Court has granted bail after prolonged custody as well as co-accused with similar role has already been granted the concession of regular bail by this Court vide order dated 22.07.2025 passed in CRM-M No.4718 of 2025.

14. In *Bhola Shikari v. The State of Chhattisgarh*, decided on 11-Nov-2024, SLP (Crl) 13236-2024, Hon'ble Supreme Court holds,

In connection with FIR No. 150 of 2024 dated 10.03.2024, registered at Police Station-Sipat, District Bilaspur, Chhattisgarh under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), the petitioner was arrested on 10.03.2024, as the petitioner along with three others were found in joint possession of 21 Kgs of Ganja.

Heard learned counsel appearing for the petitioner and also the learned counsel appearing for the respondent-State.

It is submitted by the learned counsel appearing for the State that final report was already filed and thereafter, the Court has also framed the charges against them.

In the said circumstances and taking note of the fact that the petitioner has been in custody since 10.03.2024, we are of the considered view that this special leave petition can be disposed of ordering that the petitioner shall be released on bail, subject to the stringent terms and conditions to be imposed by the Trial Court. Ordered accordingly.

15. In *Tarak Singh v. The State of West Bengal*, decided on 09-12-2024, SLP (Crl) No. 13147-2024, Hon'ble Supreme Court holds,

The petitioner is an accused in a case bearing FIR No.186/2023 registered with Police Station Panchla, District Howrah, West Bengal, for the offences punishable under Sections 20(b)(ii)(C) & 29 of the Narcotic Drugs and Psychotropic Substances Act. The allegation against the petitioner is that 28 kgs. ganja (contraband article) recovered from him. The bail application of the petitioner was dismissed by the High Court. Being aggrieved he approached this Court. He has already undergone about 1 ½ years in jail.

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

16. In *Mohit Chaturvedi v State of Madhya Pradesh*, SLP (Crl.) No. 1303-2025, decided on 04-04-2025, Hon'ble Supreme Court holds,

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

[2], In the facts of the present as per the prosecution allegations, the petitioner, who was driving the motorcycle, and the co-accused Prem Parte, was the pillion rider, said to have been found in possession of contraband. The total quantity recovered was 25.682 Kilograms ganja. However, with aid of Section 29 of the NDPS Act, the petitioner and the co-accused were implicated, indicating the quantity as commercial.

[3]. Having considered the submissions and the period of custody undergone is more than one year and that the chargesheet has already been filed. In the facts and all attending circumstances, without expressing any opinion on the merits of the case, we deem it appropriate to release the petitioner on bail.

17. 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, coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage. However, this order shall take effect from the time it is uploaded to this Court's official webpage.

18. Given the 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, with or without sureties, with a maximum bond amount not to exceed INR 25,000.

19. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, the surety is capable of producing the accused. However, instead of surety, the petitioner may provide a fixed deposit of INR 25,000/-, with a clause that the interest shall not be accumulated in FD, either drawn from a State-owned bank or any bank listed on the National Stock Exchange and/or Bombay Stock Exchange, in favour of the "Chief Judicial Magistrate" of the concerned Sessions Division; or a fixed deposit made in the name of the petitioner, with similar terms and with endorsement from the banker stating that the FD shall not be encumbered or redeemed without the permission of the concerned trial Court, or until the surety bond has been discharged.

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 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 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 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."

25. 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."

26. 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.

27. There is a possibility of difference in the spellings of the petitioner's name, e.g., Kusham Devi, etc., and such difference shall be ignored.

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

29. In Amit Rana v. State of Haryana, CRM-18469-2025 [in CRA-D-123-2020, decided on 05.08.2025], a Division Bench of Punjab and Haryana High Court in paragraph 13, holds that "To ensure that every person in judicial custody who has been granted bail or whose sentence has been suspended gets back their liberty without any delay, it is appropriate that whenever the bail order or the orders of suspension of sentence are not immediately sent by the Registry, computer systems, or Public Prosecutor, then in such a situation, to facilitate the immediate restoration of the liberty granted by any Court, the downloaded copies of all such orders, subject to verification, must be accepted by the Court before whom the bail bonds are furnished."

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

(ANOOP CHITKARA)
JUDGE

19.09.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.