

CRM-M-41714-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41714-2025
Reserved on: 08.09.2025
Pronounced on: 22.09.2025

Gautam ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Saksham Malhotra, Advocate for
Mr. Attinder Singh, Advocate
for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
33	03.03.2025	A Division, District Police Commissionerate Amritsar	304(2), 125, 3(5) of BNS 2023 and Section 25 of Arms Act (Sections 21-B, 27A of 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 (Section 439 CrPC) seeking 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. Per paragraph 3 of the bail petition as well as custody certificate dated 06.09.2025, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	39	23.02.2023	21-B/29 of NDPS Act	Maqboolpura

3. Facts of the case are being taken from the reply filed by the State, which reads as follows:-

“That the brief facts of the present are that a case/FIR No. 33 dated 03.03.2025 under section 304(2), 125,3(5) of BNS, section 25, 27/54/59 of the Arms Act and section 21-B, 27-A, 29/61/85 of NDPS Act, was registered at Police Station A Division, Distt: Amritsar City, upon the

CRM-M-41714-2025

statement of the complainant Pawan Kumar, Son of Dharampal, Resident of Akanakpur, Police Station Chhutmalpur, Police Bhagwanpur, District Station Haridwar, who stated that he is working as a conductor on the bus bearing registration no. UK 07-PA-3090 of Uttarakhand Roadways Rishikesh Depot. That on 03.03.2025 at 12.20 AM, after deboarding the passengers from the bus at the bus stand Amritsar and parking the bus at one side, he (the complainant) and the driver of the bus were going towards the Dhaba situated near Civil Hospital, Ghah Mandi Amritsar to eat dinner, then a white colour Santro car came and stopped near us in which four persons were sitting and one person remained sitting in the driver seat and three persons came out from the car and manhandled with him. It was further stated by the complainant that one person was armed with pistol and gave blow with the handle of pistol on my head and snatched the cash bag containing Rs. 33000/-, ticket cutting electronic Machine bearing No. 89612445 and ticket copy no. 047407, 0071831, 0080951, 0129635 and while firing in air, they snatched the above said material from me (the complainant) and ran away in their Santro car. Therefore, on the basis of the aforesaid statement, the FIR No. 33 dated 03.03.2025 under section 304(2), 125, 3(5) of BNS and Section 25 of Arms Act, Police Station Division A, Distt. Amritsar City was registered against the unknown persons.”

4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

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 reply.

CRM-M-41714-2025

8. It shall be relevant to refer to paragraphs 21 to 23 of the reply, which read as follows:

“THE EVIDENCE BASED ON WHICH THE PETITIONER WAS ARRAIGNED AS AN ACCUSED.

21. That the deponent humbly submits that the present petitioner-accused Gautam was nominated as co-accused on the basis of secret information received by the investigating officer.

THE EVIDENCE AGAINST THE PETITIONER

22. That the deponent humbly submits that the prosecution evidence against the present petitioner-accused Gautamis primarily based on the identification made by the complainant besides disclosure statements suffered by the present petitioner himself and other arrested co-accused persons, recovery of the car Santro used in commission of crime and recovery of 22 grams of heroin and drug money Rs. 2000/- were recovered from his car.

THE ROLE OF THE PETITIONER

23. That the deponent humbly submits that the allegations levelled against the petitioner and co-accused(s) are that the petitioner and co-accused(s) are that they had snatched the money by using deadly weapons. The present petitioner Gautam was armed with a pistol which was hit on the head of the complainant by the petitioner Goutam.”

9. Dealing in 22 grams of heroin in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Heroin/ Chitta/ Smack/ Brown Sugar/ Diacetylmorphine
Quantity detained	22 Gram
Punishable U/s	S.21(b) of NDPS Act, 1985
Quantity type	Intermediate
Drug Quantity in % to upper limit of Intermediate	8.80%

Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and

CRM-M-41714-2025

	Commercial)	
Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.O.1055(E)	10/19/2001
-		
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	

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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)
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.
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10. 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. 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.

11. Other allegations against the petitioner are of theft, however, the police claim that the police had also recovered Rs. 2,000/- and a weighing machine. A perusal of FIR does not point out that how such a petty amount was the proceeds of drugs sale or the snatched money.

12. Per the custody certificate dated 06.09.2025 the petitioner’s total custody in this FIR is 05 months & 28 days.

13. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal.¹In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial.—Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? —Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? —Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.² Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and

¹ Supreme Court of India in Vaman Narain Ghiya v. state of Rajasthan, [E-SCR] ; [2008] 17 SCR 369, Para 16, decided on 12.12.2008.

²Supreme Court of India in State of Kerala v. Raneef, SC 2J [E-SCR]; [2011] 1 SCR 590, Para 4, decided on 03.01.2011.

CRM-M-41714-2025

circumstances of the case.³ Personal liberty deprived when bail is refused, is too precious a value of our constitutional system recognised under Art. 21 that the curial power to negate it is a great trust exercisable, not casually, but judicially with lively concern for the cost to the individual and the community.⁴ When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated.⁵

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

15. Given the penal provisions invoked, 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, subject to compliance with the terms and conditions mentioned in this order.

16. 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. This order shall come into force from the time it is uploaded on this Court's official webpage.

CONDITIONS:

17. 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 10,000.

18. 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 10,000/-, 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.

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

1.	AADHAR number	
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³ Supreme Court of India in Siddharam Satlingappa Mhetre v. State of Maharashtra, SC 2J [E-SCR], Paragraph 127, decided on 02.12.2010.
⁴ Supreme Court of India in Babu Singh & ors v. State of UP, [E-SCR] P. 777, decided on 31.01.1978.
⁵ Supreme Court of India in Sanjay Chandra v. CBI , [2011] 13 (ADDL.) S.C.R. 309, Para 26, [E-SCR], decided on 23.11.2011.

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)	

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

21. 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.

22. 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 society; it would also restrain the accused from influencing the witnesses and repeating the offense.

23. 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.”

24. 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

CRM-M-41714-2025

necessary consequences.”

25. 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.

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 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.

27. The concerned Judicial Magistrate/ Trial Court is authorized to delete, modify, or relax any of the conditions mentioned above and is competent to do so following the law.

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, stand disposed of.

(ANOOP CHITKARA)
JUDGE

22.09.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.