



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(224) CRM-M-43413-2024
DATE OF DECISION: 19.05.2025

Raj ThakurPetitioner

VERSUS

State of HaryanaRespondent

(240) CRM-M-22626-2025
Ram BabooPetitioner

VERSUS

State of HaryanaRespondent

CORAM HON’BLE MR. JUSTICE RAJESH BHARDWAJ

Present Mr.Ankit Chauhan, Advocate, for the petitioner
in CRM-M-22626-2025.
Mr. I.S.Kooner, Advoate, for the petitioner
in CRM-M-43413-2024.
Mr. Tanuj Sharma, AAG, Haryana.

RAJESH BHARDWAJ, J (ORAL)

1. This order will dispose of above mentioned petitions as same have arisen out of a common FIR.
2. Present petitions have been filed praying for the grant of regular bail to both the petitioners in both the petition in case bearing FIR No.142 dated 02.04.2024 under Section 18 of NDPS Act (Section 29 of NDPS Act added lateron), registered at Police Station Mahesh Nagar, District Ambala.
3. Succinctly the facts of the case are that on 02.04.2024 police while on patrolling received a secret information to the effect that Raj Thakur son of Nempal Singh is involved in selling opium. If a nakabandi is done, he could be arrested along with the contraband. It was informed that he would come on foot from Saha side to Khudda Dukhedi T-point via



Jagadhari-Ambala Road towards village Mohda. If nabbed, can be apprehended along with opium. On receiving secret information, a raiding party was constituted and the police with a Special Officer informer reached the place as disclosed. At around 03:30 pm, a boy as disclosed was seen coming on foot. On pointing out by secret informer, he was apprehended. On asking, he disclosed his name as Raj Thakur. He was carrying a sports bag along with him. He was suspected to be carrying contraband in the sports bag and as such offer was given to be searched. On conducting of search of the bag, opium weighing 2 kgs 600 gms was recovered. He failed to produce any licence regarding possession of the same and thus, the FIR was registered and he was arrested on the spot. The samples taken were sent to the FSL. During investigation, he made a disclosure statement regarding Ram Baboo (petitioner in CRM-M-22626-2025), who was disclosed to be the supplier of the contraband. Thus, he was also arrested on 28.02.2025. On receiving the FSL report, the challan was presented. After framing the charge sheet, trial Court proceeded with the trial. The petitioners approached the Court of learned Additional Sessions Judge, Ambala praying for the grant of bail. However, after hearing both the sides finding no merit in the same, the learned Additional Sessions Judge, Ambala declined the petition filed by the petitioners vide order dated 20.07.2024 and 09.04.2025 respectively. Hence being aggrieved, the petitioners are before this Court by way of filing the present petitions praying for the grant of regular bail.



3. Learned counsel for the petitioner-Raj Thakur have vehemently contended that the FIR in the present case is registered on the basis of secret information. Although there is violation of Section 42 of NDPS Act. It is submitted that no independent witness has been joined and thus, from the alleged bag being carried by the petitioner Raj Thakur (in CRM-M-43413-2024), recovery of 2.6 kgs of opium has been allegedly shown to be effected. It is submitted that it is violation of Section 50 of NDPS Act. He submits that the petitioner has no criminal antecedents and he is behind bars since the date of his arrest. However, the trial is not concluded till date.

4. Counsel for the petitioner Ram Baboo in CRM-M-22626-2025 has submitted that the petitioner has been implicated in the present case on the basis of the disclosure statement of co-accused, which is not admissible in the eyes of law. He also submits that the petitioner was falsely implicated in one more case, however, he is on bail in that case. It is, thus, submits that the petitioners deserve to be granted bail.

5. Per contra, learned counsel for the State however has opposed the submissions made by counsel for the petitioner. He submits that the petitioner Raj Thakur has been arrested in the present case on the basis of the secret information and opium 2.6 kgs was recovered from him, which is commercial quantity under the provisions of Section 37 of the NDPS Act. He submits that during investigation, co-accused Ram Baboo, was found to be the supplier of the contraband. He submits that qua petitioner Raj Thakur, out of eighteen, five prosecution witnesses have been examined so far. So far as petitioner Raj Baboo is concerned, as he has been arrested on 28.02.2025, thus, challan has been presented on 25.04.2025. He has placed on record separate custody certificates of the petitioners today in the Court.



6. Heard.

7. After hearing learned counsel for the parties and perusing the record, it is inferred that FIR in the present case has been registered on the basis of secret information. The recovery has been effected from the petitioner-Raj Thakur i.e opium weighing 2.6 kgs and as per the schedule of NDPS Act the commercial quantity of opium is 2.5 kgs. The Custody certificate shows that the petitioner Raj Thakur has no criminal antecedents. So far as the petitioner-Ram Baboo is concerned, it is informed that he is involved in one more case under NDPS Act, however, he is on bail in that case.

8. After perusal of the order passed by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain vs. State (NCT of Delhi), 2023 Live Law (SC)260**, this Court is of the opinion that the case of the petitioner is covered by the ratio of law laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.



21it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.'

9. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the arguments raised by both the sides and perusing the record, the Court is of the opinion that learned counsel for both the petitioners succeed in making out a case for the grant of bail. Accordingly, both the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

19.05.2025
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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No