

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52258-2025
Reserved on: 01.10.2025
Pronounced on: 28.10.2025

Shanty ...Petitioner
Versus
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sanpreet Singh Kalra, Advocate, for the petitioner.
Mr. Rakesh Kumar Jangra, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
311	20.06.2024	Sadar Thanesar, Distt. Kurukshetra	15-C, 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. As per paragraph 6 of the bail application, the petitioner has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 20.06.2024, based on secret information, the Police seized 60 kg of poppy straw from the possession of Tejinder Singh, who during his custodial interrogation, implicated the petitioner.
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 seeks bail on the grounds of prolonged pretrial custody.
6. 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 his family.
7. 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, 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.

8. The State’s counsel opposes bail and refers to the reply.

REASONING:

9. As per paragraph 2 of the reply, the contraband is 60 kg of poppy husk.

10. Dealing in 60 kg of poppy husk in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Poppy straw
Quantity detained	60 Kg
Punishable U/s	S.15(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	120.00%

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)

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.	110	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Poppy straw	
Other non-proprietary name	*****	
Chemical Name	*****	
Small Quantity	< 1000 Gram (i.e. equivalent to 1 Kg)	
Commercial Quantity	> 50000 Gram (i.e. equivalent to 50 Kg)	

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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.15 & S.2(xviii) NDPS Act, S.O.821(E)	11/14/1985

Sr. No.	S.2(xviii)
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Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom; S. 2(viiiib)] “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; S.2 (xvii) “opium poppy” means— (a) the plant of the species <i>Papaver somniferum</i> L; and (b) the plant of any other species of <i>Papaver</i> from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act; S2. (xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

11. 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.
12. The evidence collected so far consists of disclosure statements. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of BSA, 2023.
13. In *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, the majority view of a three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

14. As per the custody certificate dated 30.09.2025, the petitioner's custody in this FIR is of 01 year, 03 months and 04 days.

15. 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.

16. 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 demonstrated by the following judicial precedent.

17. In Shambhulal Gurjar v. State of Rajasthan, decided on 23-04-2024, SLP (Crl) 16671-2024, the Hon’ble Supreme Court holds,

The allegation against the petitioner is that there is a recovery of 60 kgs of poppy husk/straw (contraband article) from him and prior to this incident, he has three criminal antecedents relating to the NDPS Act registered in the year 2019, 2021 & 2022. The third bail application of the petitioner was dismissed by the High Court. He has already undergone about 1 year and 8 months in jail.

Heard learned counsel for the petitioner and the respondent State.

Considering the fact that the contraband article is a poppy straw although he has three criminal antecedents but since he has been in jail for the last 1 year and 8 months, we are of the opinion that a case of bail is made out for the petitioner.

18. Following the judicial precedent mentioned above, without commenting on the case's merits, and considering the petitioner’s pre-trial custody, clean antecedents, the weight of the drugs, coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage. Moreover, the main accused has already been

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

granted concession of regular bail by this Court vide order dated 19.09.2025 passed in CRM-M-43638-2025.

CONDITIONS:

19. 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.

20. 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.

21. 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)

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

23. 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.

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

25. 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."

26. 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."

27. 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.

28. This bail is conditional, with the foundational condition being that if the petitioner repeats the offense, 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.

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

30. It is clarified that this bail order shall not be considered as a blanket bail order in any other matter and is only limited to granting bail in the FIR mentioned above.

31. 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.”

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

(ANOOP CHITKARA)
JUDGE

28.10.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.