

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-48055-2024  
Reserved on: 13.11.2024  
Pronounced on: 29.11.2024

Happy @ Bholla ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Rashi Verma, Advocate for  
Mr. Manu Loona, Advocate,  
for the petitioner.  
  
Mr. Sukhdev Singh, AAG, Punjab.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                      | Sections           |
|---------|------------|-------------------------------------|--------------------|
| 168     | 07.08.2024 | City Jagraon, Distt. Ludhiana Rural | 22, 25 of NDPS Act |

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. As per paragraph 10 of the bail petition and as per paragraph 8 of the status report, the accused has the following criminal antecedents:

| Sr. No. | FIR No. | Dated      | Offenses               | Police Station |
|---------|---------|------------|------------------------|----------------|
| 1.      | 5       | 08.01.2024 | 21, 61, 85 of NDPS Act | Dakha          |

3. The facts and allegations are taken from the reply filed by the State. On Aug 07, 2024, based on a chance recovery, the Police seized 220 tablets of Alprazolam and 120 loose capsules of Pregabalin from the possession of co-accused Akash and Sunil. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and BNSS, 2023.

4. During custodial interrogation, the main accused, Akash and Sunil, confessed before the Police officer that they were selling the drugs on the petitioner's behalf. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied

him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

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 his family.

6. The State's counsel opposes bail and refers to the status report.

7. It would be appropriate to refer to the following portions of the status report, which read as follows:

*"3. That then ASI Dharminder Singh counted the tablets and capsules which were in the envelope of these accused persons. There were 120 loose capsules. There were 22 strips of tablets of Alprazolam 05 but batch number was deleted on the strips. There were 10 tablets in each strip. So total 220 tablets of Alprazolam were recovered from that envelope. ASI Dharminder Singh prepared one parcel of the tablets and capsules and sealed the same with his seal bearing impression DS and taken into possession. Then the I.O. sent ruqa to the police station and got registered FIR No. 168 dated 07-08-2024 u/s 22/25/61/85 NDPS Act, PS City Jagraon against accused Akash @ Ladoo, Sunil and petitioner Happy @ Bhola. Accused Akash @ Ladoo and Sunil were arrested at the spot.*

*6. That parcel of intoxicant tablets and capsules was deposited in Regional Testing FSL Ludhiana on 13-08-2024 for report. After analysis the FSL has issued report No. 1333/2024/Toxi/RTFSL/LSH/Pb dated 26-09-2024. The report reveals that salt Alprazolam was detected in the tablets and average weight of one tablet was 133 mg. and salt Pregabalin was detected in the contents of capsules and average weight of one capsule was 921 mg.*

*9. That head wise reply of the orders passed by this Hon'ble Court is as under:-*

*(i) That the role of the petitioner is that he has employed the above mentioned accused persons to sell his intoxicant tablets and capsules to the people.*

*(ii) That the evidence against the petitioner in this case is that on interrogation of accused Akash @ Ladoo and Sunil Kumar, they told that petitioner Happy @ Bhola has left them at the place of recovery on his car to sell his intoxicant tablets and capsules."*

8. Thus, the evidence collected so far consists of disclosure statements without any discovery of fact.
9. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband. No other evidence is collected at this stage to connect the petitioner with the main accused. Thus, there is no justification to deny bail.
10. Dealing in 29.26 Grams of Alprazolam is a punishable offense under the NDPS Act in the following terms:

|                                                   |              |
|---------------------------------------------------|--------------|
| Substance Name                                    | ALPRAZOLAM   |
| Quantity detained                                 | 29.26 Gram   |
| Quantity type                                     | Intermediate |
| Drug Quantity in % to upper limit of Intermediate | 29.26%       |

|                                                                                                               |                                                                        |
|---------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Specified as small & Commercial in S.2(via) & 2(xxiii) NDPS Act, 1985                                         |                                                                        |
| Notification No                                                                                               | S.O.1055(E)                                                            |
| Dated                                                                                                         | 10/19/2001                                                             |
| Sr. No.                                                                                                       | 178                                                                    |
| Common Name<br>(Name of Narcotic Drug and Psychotropic Substance<br>(International non-proprietary name (INN) | ALPRAZOLAM                                                             |
| Other non-proprietary name                                                                                    | *****                                                                  |
| Chemical Name                                                                                                 | 8-chloro-1-methyl-6-phenyl-4H-s-triazolo[4,3-a]<br>[1,4]benzodiazepine |
| Small Quantity                                                                                                | 5 Gram                                                                 |
| Commercial Quantity                                                                                           | 100 Gram                                                               |

|                                                                                                               |                                                                         |
|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985        |                                                                         |
| Notification No                                                                                               | NDPS Act, 1985 (61 of 1985), S.O. 821(E)                                |
| Dated                                                                                                         | 11/14/1985                                                              |
| Sr. No.                                                                                                       | 30                                                                      |
| Common Name<br>(Name of Narcotic Drug and Psychotropic Substance<br>(International non-proprietary name (INN) | ALPRAZOLAM                                                              |
| Other non-proprietary name                                                                                    | *****                                                                   |
| Chemical Name                                                                                                 | 8-Chloro-1-methyl-6-phenyl-4H-s-triazolo [4, 3-a] [1, 4] benzodiazepine |

11. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

12. Section 2 (vii-a) of the NDPS Act defines commercial quantity as greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a 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 specify an offence and 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 the 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.

13. In *Sami Ullaha v Superintendent Narcotic Control Bureau*, (2008) 16 SCC 471, the Hon'ble Supreme Court holds that in intermediate quantity, the rigors of the provisions of Section 37 may not be justified.

14. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

15. Given the above, 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 custodial interrogation or the pre-trial incarceration at this stage. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for anticipatory bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

16. 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 Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

17. 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)                                                                                                             |  |

18. The bail order is subject to the petitioner’s complying with the following terms.

19. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

20. 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.

21. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

22. 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.”

23. This bail is conditional, and the foundational condition is that if the petitioner

indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

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

25. 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.

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

**(ANOOP CHITKARA)**  
**JUDGE**

**29.11.2024**  
**Jyoti-II**

|                            |     |
|----------------------------|-----|
| Whether speaking/reasoned: | Yes |
| Whether reportable:        | No. |