

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4072-2024
Reserved on: 13.02.2025
Pronounced on: 19.02.2025

Nirvar Singh @ Nirvair Singh @ Gopi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Prateek pandit, Advocate,
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
9	09.01.2023	Dharamkot, District Moga	21, 22, 29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC seeking regular bail.

2. In paragraph 8 of the bail petition, the accused declares that he has no criminal antecedents. However, as per paragraph 12 of the status report and custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	91	11.05.2023	21 of NDPS Act	Dharamkot
2.	59	13.05.2023	304 IPC	Dharamkot

3. The facts and allegations are taken from the translated copy of FIR as Annexure P-1. On 09.01.2023, based on a chance recovery, the Police seized 10 grams of heroin and 220 intoxicant tablets from the petitioner's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. 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.

5. The State’s counsel opposes bail and refers to the status report.
6. It would be appropriate to refer to para 8 and 11 of the status report, which reads as follows:

8. *That as per result of FSL, total 220 intoxicant tablets, salt of Alprazolam was found in 199 tablets, Etizolam salt was found in 21 tablets and Diacetylmorphine salt was found in the heroin. Copy of FSL report is attached herewith.*

11. *That recovery effected in this case falls within ambit of commercial quantity, so provisions of Section 37 of NDPS Act are applicable in this case and petitioner is not entitled for concession of regular bail.”*

7. As per FSL report, following ingredients are found:

Parcels Detail		Ingredient found present
Parcel 1		Diacetylmorphine
Parcel 2	Exhibit 1	Alprazolam
	Exhibit 2	Etizolam

REASONING:

8. 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 put in place by the Legislature under Section 37 of the NDPS Act.
9. However, the petitioner is entitled to bail because Hon’ble Supreme Court had granted bail on prolonged custody in the following judicial precedents:

- 1) In Junaid Alam v. State of Uttarakhand, decided on 12 Aug 2024, SLP(Crl.) 7708-2024, Hon’ble Supreme Court holds,
- [2]. It is pointed out that the petitioner has been in custody for last more than 18 months since he was arrested on 25.01.2023. It is then submitted that only 3 out of the 10 cited prosecution witnesses have been examined and they have not said anything to connect the petitioner with the crime.
- [3]. The learned counsel for the State would submit that the concerned Contraband are medicinal drugs but they are sold for profit. Moreover, it is of commercial quantity.
- [4]. We have perused the nature of the Contraband i.e., the prohibited medicines (SYP Codectus 100 Bottles (100 MI each), Cap Pyeevon Spas Plus 720 Cap Parvion Spas 800 Capsules, Spasonof NF 960 capsules, Capsules Spasmoproxyvon Plus 144, Proxywell Spas 2568 Capsules, Alprasafe Table 600 Tablets, Pyeevon Spas Plus 32 Capsules).

[5]. Having considered the above and the fact that the trial is unlikely to conclude on a near date, we are of the view that the petitioner – Junaid Alam deserves to be granted bail. It is ordered accordingly. Appropriate bail conditions be imposed by the trial court.

10. 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.

11. Given this, the criminal antecedents are also not legal grounds for denying the rigors of S. 37 of the NDPS Act at this stage.

12. In Tajmul SK v. The State of West Bengal, decided on 23 Jul 2024, CrA 3047-2024, Hon'ble Supreme Court holds,

[5]. We are inclined to set aside the impugned order only on the premise that right to speedy trial is a fundamental right. Despite the fact that the appellant has been under incarceration for more than one and a half years, the trial is yet to start, though, it is submitted by learned counsel appearing for the State that charges have been framed. Suffice it is to state that trial would take considerable length of time. There is no antecedent involving the appellant.

[6]. Accordingly, the impugned order is set aside and the appellant is granted bail, subject to the conditions that may be imposed by the Trial Court.

13. Given the above, the petitioner's pretrial custody is more than some of the judicial precedents mentioned above; the petitioner is entitled to bail under Article 14 of the Constitution of India.

14. As per the custody certificate dated 12.02.2025, the petitioner's custody in this FIR is of one year, seven months and two days. Given the drugs were medicines that attracted violation of S. 22 of NDPS Act, viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no for justifiability for further pre-trial incarceration at this stage.

15. 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 bail.

CONDITIONS:

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

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 concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned 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. This order is subject to the petitioner’s complying with the following terms.

19. 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.

20. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection staff 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 the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

21. 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.”

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 shall file an application for cancellation of this bail before the Trial Court, which shall be at liberty to cancel this bail.**

24. The concerned trial court is authorized to delete, modify, or relax any of the above conditions and shall be competent to do so in accordance with the law.

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

26. 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.

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

(ANOOP CHITKARA)
JUDGE

19.02.2025

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.