



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.45001 of 2024
Reserved on: 18.10.2024
Pronounced on: 29.10.2024

Jasvir Kaur @ Jass ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Abhilasha Kainth, Advocate for
Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
135	20.07.2023	City South, District Moga	21 and 22 (later on added section 29) of NDPS Act, 1985

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. Per paragraph 18 of the reply filed to the bail application and the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	104	10.06.2023	Under sections 21, 29, 61, 85 of NDPS Act	City South Moga
2.	241	10.11.2022	Under sections 21, 27A, 29, 61, 85 of NDPS Act and 473, 411 IPC	/City Moga
3.	65	22.04.2021	Under section 61 of Excise Act	City South Moga
4.	95	12.05.2022	Under sections 304, 201, 34 IPC	City South Moga
5.	238	03.11.2022	Under sections 21, 29, 85 NDPS Act	City Moga
6.	CC-Sandeep Kaur/2024	--	Under sections 138, 142 of NI Act	--
7.	68	08.04.2022	Under sections 21, 61, 85 of NDPS Act	City South Moga



3. The facts and allegations are taken from the reply filed by the State. On 20.07.2023, based on prior information/a chance recovery, the Police seized 40 tablets of Etizolam 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 Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

5. The petitioner's counsel made the following submissions:

A) The petitioner is chronic patient of Diabetes and suffering from gangrene and L & R Lower Limb Doppler.

B). The petitioner was granted interim regular bail vide CRM-M- 21515-2024 for period of 8 weeks and said petition was allowed and petitioner never misused the said concession granted by this Hon'ble Court.

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 their family.

7. The State's counsel opposes bail and refers to the reply.

8. It would be appropriate to refer to para 15 & 17 of the reply filed to the petition, which reads as follows:

*"15. **Evidence Against the Petitioner:** Petitioner was apprehended red handed by the police party on 20.07.2023 and from her possession 4 Strips of Etizolam tablets JP 0.5 mg ETTEXA-0.50, each containing 10 tablets, total 40 tablets of were recovered.*

17. Role of the petitioner;

Petitioner was apprehended red handed by the police party on 20.07.2023 and from her possession 4 strips of Etizolam tablets JP 0.5 mg ETTEXA-0.50MD B.no.-DNTD02009 MFG.-02/23 EXP-01/25, each containing 10 tablets, total 40 tablets of were recovered."

9. 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.

10. In Md. Aliul Islam @ Aliul Islam @ Aliul vs The State of West Bengal, Criminal



Appeal No.1202/2024, the Hon'ble Supreme Court held as under:-

"Heard learned counsel for the appellant in support of the petition and learned counsel for the State and perused the material on record. The appellant is in custody for approximately 1 year 4 months.

During the course of submission it was pointed out by the learned counsel for the appellant that in another case the appellant has been granted bail and therefore, similar relief may be granted by this Court in this case.

The said submission is in response to the submission made by the learned counsel for the respondent-State that this is not the only case in which the appellant has been apprehended. She further submitted that a huge quantity of codeine cough syrup was recovered from the premises (Godown) which has been tenanted by the appellant herein. Considering the facts on record, in our view, the case for bail is made out."

11. In Nandalal Mondal @ Abhay Mondal vs The State of West Bengal, MANU/SCOR/00327/2024, Hon'ble Supreme Court held as under:-

[2]. The allegations are that the petitioner along with other accused persons were found in possession of two plastic bags a cough containing a total of 10,000 ml. Of codeine phosphate narcotic substance. It further syrup, which is notified as a narcotic substance. It further appears from the contents of the FIR that the petitioner, who was found in conscious possession of two white plastic containers both of which contained 5,000 ml. each of the said liquid. He was apprehended at the spot and is in custody since then.

[3]. The respondent State of West Bengal has filed its counter affidavit, in which it is candidly acknowledged that though the investigation is complete and the chargesheet has been filed, however, the charges are yet to be framed. The prosecution proposes to examine 10 witnesses. The conclusion of trial will, thus, take considerable time. The petitioner is in custody for the last more than one and a half years.. He does not have any criminal antecedents.

[4]. According to learned counsel appearing on behalf of respondent State, the narcotic substance allegedly recovered from the petitioner's possession is of commercial quantity' and, as such, the rigors of Section 37 of the NDPS Act are attracted. We have considered the submission.

[5]. Taking into consideration the period already undergone by the petitioner in custody; the fact that he does not have any criminal antecedents and also keeping in view that the prolonged incarceration will not serve the cause of substantial justice, however, without expressing any views on the merits of the case, we are inclined to release the petitioner on bail at this state. The petitioner is, accordingly, directed to be released on bail subject to the following directions:



(i) The petitioner shall furnish bail bonds to the satisfaction of the Trial Court.

(ii) The petitioner shall appear before the Trial Court regularly on each and every date of hearing.

(iii) In case the petitioner is found involved in any other case under the NDPS Act, in that event, the bail granted to him shall stand cancelled automatically and he shall be liable to surrender immediately.

6. The accordingly. Special Leave Petition stands disposed of accordingly.”

12. In SK. Nasiruddin @ Nasirddin SK. Vs State of West Bengal, Criminal Appeal No.1415 of 2024, the Hon’ble Supreme Court held as under:-

[5]. We note the submission of the learned counsel for the appellant that the appellant was arrested on 12.04.2022 and since then he has been in custody as an under trial prisoner. Even though charges have been framed, trial is yet to begin but there is no likelihood of the trial being taken up and completed within a short period of time. It is also submitted that the appellant does not have any criminal antecedents. It is also brought to our notice that the High Court while rejecting the regular bail application had erroneously recorded that 50ltrs. of codeine phosphate was recovered from the appellant. This is perhaps a mistake as recovery of only 5 ltrs of codeine phosphate which was mentioned in the FIR.”

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

14. Per the custody certificate dated 17.10.2024, the petitioner's custody in this FIR is of 01 year and 09 days. Given the drugs were medicines that attracted violation of S. 22 of the NDPS Act, viz-a-viz pre-trial custody, and her critical medical condition, coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

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. 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 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. 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.”
21. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.
22. 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.



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

(ANOOP CHITKARA)
JUDGE

29.10.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.