

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	107	05.04.2022	Under sections 21, 61, 85 of NDPS Act	Ferozepur

3. Further, in paragraph 14 of the bail petition i.e. CRM-M-48532-2024 as well para 4 of the reply, the accused-Kambi @ Amar has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	107/ 2022	--	Under sections 21 of NDPS Act	Ferozepur
2.	287/2022	--	Under sections 21-B, 29 of NDPS Act	District Ferozepur
3.	125/2023	--	Under section 21 of NDPS Act	District Ferozepur

4. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“That in compliance to the order dated 05.09.2024, it is most respectfully submitted that FIR No.328, dated 13.08.2024 under section 105, 3(5) of BNS, Police Station City Ferozepur was registered against the petitioner and her husband Kambi on the statement of complainant Kajal wife of Rahul son of Roop. As per complainant, she was married with Rahul about eight years ago and from this marriage, they were blessed with two children Yuvraj aged about 7 years and Deep aged about 5 years. She and her husband earning bread and butter for their family by doing labour work. For the last about 5 years, Rahul deeply indulged in taking heroin. The petitioner as well as her husband used to sell the heroin and they used to provide heroin to Rahul. The complainant as well grand mother of Rahul several times requested the petitioner and her husband not to provide heroin to Rahul, but of no use. On the day of occurrence, Rahul stolen Rs.500/- from the Almirah of the house and purchased intoxicant from the petitioner and her husband and thereafter went to Bathroom and when after waiting for quite a long time, complainant husband did not came from bathroom and when complainant went for well being of her husband knocked the door, but no reply came out from complainant's husband, then complainant opened the door by pushing it and then found that her husband was lying on the earth and the Needle containing intoxicant substance lying in his left hand.”

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(s) and their family.

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

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

“6. That so far as the role of the petitioner is concerned, as alleged by complainant that the petitioner along with her husband supplied heroin/intoxicant substance to the husband of the complainant, due to which he died. Moreover post mortem and Visra report are still to be received.

7. That so far as the evidence against the petitioner is concerned, she was duly named in the FIR along with her husband by the complainant. Moreover the petitioner is habitual in selling the narcotic intoxicant substance and as such FIR's as stated supra are also pending against her u/s 21/61/85 NDPS Act.”

9. 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.
10. Given the above, the penal provisions invoked coupled with the primafacie 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, subject to the compliance of terms and conditions mentioned in this order.
11. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner(s) makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.
12. Given above, provided the petitioner(s) is not required in any other case, the petitioner(s) 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 Ilaqa 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.
13. While furnishing a personal bond, the petitioner(s) 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)	

14. This order is subject to the petitioner’s complying with the following terms. The petitioner(s) shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner(s) 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.

15. The petitioner(s) 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(s) shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner(s) 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(s) shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

16. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner(s) shall not enter the property, workplace, and residence of the victim’s family until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (CrI.) 458); and Aparna Bhatt v. The State of Madhya Pradesh, 2021:INSC:192, 2021 SCC Online SC 230.

17. Given the background of allegations against the petitioner(s), it becomes paramount to protect the victim’s family members, as well as the members of society, 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 firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond 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(s) shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms

Act, 1959, the petitioner(s) shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in 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.

18. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense. 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."

19. 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(s) notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

20. This bail is conditional, and the foundational condition is that if the petitioner(s) 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.

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(s) 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.

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

(ANOOP CHITKARA)
JUDGE

28.11.2024
Sonia Puri

Whether speaking/reasoned:

Whether reportable:

Yes

No.