

2014, based on prior information, the Police seized 100 grams of Diphenoxylate Hydrochloride 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 made the following submission:

- a) After registration of FIR the petitioner approached the Ld. Trial Court for getting the concession of bail, which was considered and allowed by the Ld. Trial Court vide its order dated 28.01.2015 (Annexure P-2). Thereafter the petitioner continuously kept on appearing before Ld Trial Court. However, since the year 2016 due to some family problem the petitioner remained in problem and due to miscommunication with the counsel before Ld. Trial Court, ultimately the petitioner missed few dates and finally the petitioner was declared proclaimed person vide order dated 23.09.2016 Annexure P-3.
- b) As a matter of fact the petitioner was having family dispute with his wife and due to which he went under depression as his wife had left away his company leaving behind two children and the petitioner remained tensed and disturbed badly and ultimately he got disconnected from the proceedings of Ld. Trial Court. As a matter of fact in the month of July 2023, the pendency of the petition came in the notice of the petitioner and he went to police station in order to know about the status of case and finally surrendered himself and since 25.07.2023 he is behind the bar. The petitioner applied his regular bail before Ld. Trial Court which was finally dismissed vide order dated 03.08.2023.
- c) The petitioner is having two small school going children namely Amarjit Singh son age 10 year studying in 8th standard and daughter namely Nurpreet Kaur age 8 years studying in 5th standard, both are studying in Govt. Elementary Middle School, Village Mirzapur Kadijala, Teshil Dasuya, District Hoshiarpur, now they are burdened on the old age mother of petitioner and widow sister, who are now facing dire hardships to maintain these children as there is no earning member in the family of petitioner except him. The father of petitioner already expired, the mother is 75 years old lady and she is bed ridden, brother of petitioner also expired.
- d) The condition of petitioner is pathetic and there is no other able bodied member available in the family of petitioner to look after and take care to these minor children except the petitioner. The petitioner went through long mental depression as his wife left the company of petitioner and also left away both minor children with the petitioner. The non-appearance of petitioner before Ld. Trial Court is absolutely unintentional and it was only a bonafide and inadvertent mistake, for which the petitioner is seeking apology and giving undertaking to take more care and caution in future.
- e) As a matter of fact the petitioner also came to know that the another co-accused namely Avtar Singh was also declared Proclaimed offender in this case and the other third accused namely Balwant Singh Bant was convicted vide judgment and order of quantum of sentence dated 09.01.2018 to undergo R.I. of 3 years only under Section 411 IPC only.
- f) Now the petitioner is behind bar since 25.07.2023 and as on today he has undergone custody of 1 year 1 months and 10 days, earlier also the petitioner remained in custody of 6 months and obtained regular bail. In this way as on today the petitioner has undergone custody of 1 year and 7 months and thus is

seeking kind indulgence of this Hon'ble Court that keeping into consideration the custody period of petitioner, he may kindly be admitted on regular bail.

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 their family.

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

7. It would be appropriate to refer to para 19 of the reply filed to the bail petition, which reads as follows:

“ROLE OF THE PETITIONER:

(i) A total of 100 grams of contraband namely Diphenoxylate Hydrochloride was recovered from conscious possession of the petitioner.

(ii) Three mobile phones sets make OKTEL blue, SAMSUNG colour black, and NOKIA were recovered from the possession of the petitioner.

(iii) One stolen motor-cycle make Hero Passion bearing registration number PB08-BA-6524 was recovered from the possession of the petitioner.

EVIDENCE AGAINST THE PETITIONER:

(i) That the petitioner was found in conscious possession of 100 grams of contraband namely Diphenoxylate Hydrochloride and at the spot, three mobile phones sets make OKTEL blue, SAMSUNG colour black and NOKIA were also recovered from him.

(ii) One stolen motorcycle make Hero Passion bearing registration number PB08-BA-6524 was recovered which was the petitioner along with co-accused namely Avtar Singh and Balwant Singh @ Bant had stolen on 24.07.2014 from vicinity of Kapoor Hospital, Jalandhar.”

8. Dealing in 100 grams of Diphenoxylate is a punishable offense under the NDPS Act in the following terms:

Substance Name	Diphenoxylate
Quantity detained	100 Gram
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	200.00%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	44

Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Diphenoxylate
Other non-proprietary name	*****
Chemical Name	1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
Small Quantity	2 Gram
Commercial Quantity	50 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.826(E)
dated	11/14/1985
Sr. No.	58
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	DIPHENOXYLATE
Other non-proprietary name	*****
Chemical Name	Ethyl 1-(3-Cyano-3, 3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester (the international non-proprietary name of which is Diphenoxylate), and its salts, preparations, admixtures, extracts and other substances containing any of these drugs, except preparations of diphnoxylate containing, per dosage unit, not more than 2.5 mg. of diphenoxylate calculated as base, and a quantity of atrophine sulphate equivalent to at least one per cent of the dose of diphenoxylate.

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 50 ltrs. 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. Before the first bail granted under S. 167(II) of CrPC, the petitioner had undergone custody of more than 6 months. After that, on re-arrest, he claims to be in custody from 25-07-2023. Thus, his total pretrial custody would be around one year and 9 months. Given that if the petitioner had not jumped the bail, he would have not been re-arrested, except subject to the outcome of the judgment, and the other factors peculiar to this case, there would be no justifiability for 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 Ilqa 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 drug detection squad, their 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 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 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.

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

23. 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.

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

(ANOOP CHITKARA)
JUDGE

12.11.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.