

BALWINDER SINGH...PETITIONER

VERSUS

STATE OF PUNJAB...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Vikas Sunak, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
251	09.11.2023	City-I, Moga, District Moga	22 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 9 of the bail petition, the accused declares that he has no criminal antecedents. However, in para 10 of the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	82	27.05.2023	22 of NDPS Act	Shahkot

3. The facts and allegations are taken from para Nos.4 and 5 of the reply filed by the State, which is extracts below:-

"xxx xxx xxx xxx

4. That brief facts of the present case are that on 09.11.2023 a police party headed by ASI Ajit Singh reached at Joginder Singh Chowk, Moga then special informer came there and informed that Balwinder Singh son of Amarjit Singh resident of Mohalla Dherian, Shahkot is habitual to sell intoxicant tablets and is present in Nim Wali Gali, opposite to Old Courts, Moga and is waiting for the customers. In case, raid is conducted, then he can be apprehended and from his possession intoxicant tablets can be recovered. On the basis of said information ASI Ajit Singh sent ruqa to the

police station and got registered the present case.

5. That on receiving the information at police Station another police party headed by SI Paramjit Kaur alongwith Laptop/printer reached at the spot and found that one person was coming from Nim Wali Gali towards main road on seeing the police party he become perplexed and tried to took U-turn and he had also thrown the transparent plastic polythene on the ground by taking out the same from the pocket. On the basis of suspicion SI Paramjit Kaur apprehended said person, with the help of police party and on enquiry said person disclosed his name as Balwinder Singh (Petitioner) son of Amarjit Singh. SI Paramjit Kaur introduced herself to the petitioner and also apprised him about his legal right that she has doubt that there are some intoxicant substance in his possession, so search of his polythene and himself is to be conducted, but he has legal right to get the search conducted presence of any gazetted officer or any magistrate. Then petitioner replied that he has faith upon SI Paramjit Kaur and she can conduct this search. In this regard SI Paramjit Kaur issued notice u/s 50 of NDPS Act to the petitioner. Police party tried to join the public witness, but nobody become ready for the same. Then as per directions of SI Paramjit Kaur, petitioner picked up the plastic polythene, which was thrown by him on the ground. During checking of said plastic polythene 100 loose tablets of peach colour were recovered, Parcel of recovered tablets was prepared and same was sealed by SI Paramjit Kaur with her seal PK and sample seal was prepared separately."

4. Counsel for the petitioner prays for bail by imposing stringent conditions and on instructions submits that the petitioner shall not indulge himself in the offence involving the commercial or intermediate quantity or the offence which falls under Section 19/24/27A of NDPS Act. He further submits that if the petitioner involves himself in the said offences, he has no objection if the State files application for cancellation of his bail. He further 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 reply.

6. It would be appropriate to refer to the evidence collected against the petition, which is taken from the reply, which reads as follows:

“XXX XXX XXX XXX

8. Role of the petitioner: Petitioner was apprehended red handed by the police on 09.11.2023 and from his possession 100 loose tablets were

recovered. Recovery effected from possession of petitioner falls within ambit of commercial quantity, so provisions of section 37 of NDPS Act are applicable in this case and he is not entitled for concession of regular bail."

REASONING:

7. 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.

8. The petitioner is entitled to bail because for the same drug, and when the quantity involved was either more or closer to the quantity seized in the present FIR, the Hon'ble Supreme Court has granted bail on prolonged custody in the following judicial precedent:

9. In *Ajay Khatri v. The State of Rajasthan*, decided on 20-03-2025, SLP (Crl) No. 1228-2025, the Hon'ble Supreme Court holds,

1. The case of the prosecution is that 6600 Alprazolam Tablets weighing 818.4 grams have been recovered from his possession. He has already undergone more than one year in jail.

2. Considering the period of incarceration of the petitioner, we are of the opinion that a case of bail is made out for the petitioner and therefore, the prayer for bail is allowed.

3. Per the custody certificate dated 06.04.2025, the petitioner's custody in this FIR is of as of now more than 01 year and 05 months.

4. 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.

5. Following the judicial precedent mentioned above, without commenting on the case's merits, and considering the petitioner's pre-trial custody, the weight of the drugs, coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage, subject to the terms and conditions of this order. However, this order shall take effect from the time it is uploaded to this Court's official webpage.

6. **CONDITIONS:**

7. 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 IlaqaMagistrate or 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.

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

8. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

9. .	10. AADHAR number
1 1. .	12. Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.
1 3. .	14. Mobile number (If available)
1 5. .	16. E-Mail id (If available)

17. This order is subject to the petitioner’s complying with the following terms.

18. 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.

19. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection squad 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.

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 the Hon’ble Supreme Court held 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. In Md. Tajiur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, the 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.”

22. *This bail is conditional, and the foundational condition is that if the petitioner commits any offence under the NDPS Act, where the quantity involved is more than half of the intermediate or commercial quantity, or violates S. 19, 24, or 27-A of the NDPS Act, then the State shall apply for cancellation of this bail before the Trial Court, which shall be eligible, authorized, and shall have the discretion to cancel this bail.*

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

24. A certified copy of this order is not required for furnishing bonds. An Advocate for the Petitioner can download the order from the Court's official web page and attest it as a true copy. If needed, the attesting officer can verify its authenticity online and use the downloaded copy to attest bonds.

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

19.05.2025
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(ANOOP CHITKARA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No