

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20812-2025
Reserved on: 07.07.2025
Pronounced on: 30.07.2025

Kulwinder Kaur @ Kindo ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. J.S. Sandhu, Advocate,
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
86	08.09.2022	Sadar Banga, Distt. SBS Nagar, Punjab	21, 22, 25 and 29 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. As per paragraph 14 of the bail application and as paragraph 10 (e) of the status report/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	132	28.12.2019	21 of NDPS Act	Sadar Banga, Distt. SBS Nagar
2.	55	02.06.2022	21 of NDPS Act	Sadar Banga, Distt. SBS Nagar
3.	114	17.08.2014	22 of NDPS Act	Bhogpur, Distt. Jalandhar.
4.	09	05.02.2021	21 of NDPS Act	Sadar Banga, Distt. SBS Nagar

3. The facts and allegations are taken from the status report filed by the State. On 08.09.2022, based on chance recovery, the Police seized 10 strips of intoxicant tablets make Etizolam Tablets IP Etizola 0.5 (each strip containing 15 tablets) from a polythene envelope, which was with the petitioner and 06 grams of heroin from a polythene envelope, which was with the co-accused Kamaljit Kumar. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. The petitioner seeks bail on pre-trial custody of more than two years and eight months.

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 his family.
6. The petitioner's counsel submits that the petitioner would have no objection whatsoever to any stringent conditions that this Court may impose, including that if the petitioner repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, or 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, or 24, or 27-A of the NDPS Act, the State may file an application to revoke this bail before the concerned Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and may do so at their discretion, to which the petitioner shall have no objection.
7. The State's counsel opposes bail and refers to the status report.
8. It would be appropriate to refer to the following portions of the status report, which reads as follows:

“10 (c) The evidence against the petitioner: The petitioner was arrested at the spot and total 10 strips of intoxicant tablets make Etizolam Tablets IP Etizola 0.5 (each strip containing 15 tablets) without having batch number were recovered from a polythene bag thrown by the petitioner. The trial of the present case is almost at the fag end and the same will be concluded shortly.

(d) The role of the petitioner: The petitioner was arrested at the spot and total 10 strips of intoxicant tablets make Etizolam Tablets IP Etizola 0.5 (each strip containing 15 tablets) without having batch number were recovered from a polythene bag thrown by the petitioner. The trial of the present case is almost at the fag end and the same will be concluded shortly.”

REASONING:

9. As per para 10(a) of reply, the weight and name of drug is 8.4 grams of Etizolam and 6 grams of heroin and it contains Diacetylmorphine.
10. Dealing with Etizolam is an offence under the following provisions and notifications:

Substance Name	Etizolam
Quantity detained	8.4 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	336.00%

<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
Notification No. & date	S.O. 1351 (E) dated 13.03.2019

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1276(E)	3/23/2021
Sr. No.	238ZZC	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Etizolam	
Other non-proprietary name	*****	
Chemical Name	4-(2-Chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3a][1,4]diazepine	
Small Quantity	< 0.05 Gram	
Commercial Quantity	> 2.5 Gram	

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.O.1275(E)	3/23/2021

Sr. No.	110ZN	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Etizolam	
Other non-proprietary name	*****	
Chemical Name	4-(2-Chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3a][1,4]diazepine	

11. 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 set forth by the Legislature under Section 37 of the NDPS Act.

12. In Sajan Abraham v State of Kerala, 2004 (4) SCC 441, the Hon'ble Supreme Court granted bail for possessing Buprenorphine because there was evidence which did not rule out that the Buprenorphine that was recovered was for personal consumption. However, this is not the petitioner's stand, as such the said judgement does not apply on the facts

13. 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:

14. 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 Ml each), Cap Pyeevon Spas Plus 720 Cap Parvion Spas 800 Capsules, Spasonof NF 960 capsules, Capsules Spasmoproxyvon Plus 144, Proxywell Spas 2568 Capsules, Alprasaft 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.

15. As per the custody certificate dated 17.05.2025, the petitioner's total custody in this FIR is 02 years, 08 months and 08 days.

16. 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.

17. 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.

CONDITIONS:

18. 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

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

Magistrate 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.

19. 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)

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

21. 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.

22. 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.

23. 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.”

24. 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.”

25. This bail is conditional, with the foundational condition being that if the petitioner repeats the offense where the quantity involved is more than half of the intermediate, or commercial, or violates S. 19, 24, or 27-A of the NDPS Act, or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, the State shall file an application to revoke this bail before the concerned Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and as per their discretion, they may cancel this bail.

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

27. *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.*

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

(ANOOP CHITKARA)
JUDGE

30.07.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.