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CRM-M-25979-2025
Date of decision: 14.07.2025

...PETITIONER

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Tejbir Singh Hundal Advocate for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

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ANOOP CHITKARA, J. (ORAL)

FIR No.	Dated	Police Station	Sections
02	03.01.2024	Sadar Moga, District Moga	22 of NDPS Act, 1985

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. Per paragraph 4 of the bail application and para 10 of the reply/custody certificate, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date/Year	Offenses	Police Station
1.	23	20.03.2021	323/324/34 IPC	Sadar Moga
2.	61	10.02.2021	21/22 NDPS Act	Sadar Moga
3.	122	11.09.2021	21 NDPS Act	Sadar Moga
4.	76	06.08.2022	323/341/336/482/148 IPC and 25 Arms Act	Sadar Moga
5.	142	27.12.2021	25 Arms Act	Sadar Moga
6.	76	19.06.2023	21 NDPS Act	Sadar Moga
7.	167	14.09.2023	21 NDPS Act and 25 Arms Act	Sadar Moga
8.	135	14.12.2023	21 NDPS Act	Sadar Moga
9.	119	20.09.2020	25/54/59 Arms Act	Zira
10.	18	28.02.2023	22/29/61/85 NDPS Act	Sadar Moga

3. The facts and allegations are taken from the reply filed by the State. On 03.01.2024, based on a chance recovery, the Police seized 60 loose tablets of Etizolam 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 seeks bail on the grounds of prolonged pretrial custody.
5. Counsel for the petitioner submits that the wife of the petitioner has expired today morning. He further 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 Special Judge or Sessions 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.
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 dated 05.07.2025, which read as follows:

"9. Role of the petitioner:

On 03.01.2024, petitioner was apprehended red handed by the police and from his possession 60 loose tablets (Etizolam) were recovered. Recovery effected from possession of petitioner falls within provisions of Commercial quantity."

REASONING:

8. As per para 6 of reply, the weight and name of drug is 11.16 grams, and it contains Etizolam.
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 set forth by the Legislature under Section 37 of the NDPS Act.
10. 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:
11. In *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.

12. 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.

13. In *Tajmul SK v. The State of West Bengal*, decided on 23 Jul 2024, CrA 3047-2024, Hon'ble Supreme Court holds,

1. [5]. We are inclined to set aside the impugned order only on the premise that right to speedy trial is a fundamental right. Despite the fact that the appellant has been under incarceration for more than one and a half years, the trial is yet to start, though, it is submitted by learned counsel appearing for the State that charges have been framed. Suffice it is to state that trial would take considerable length of time. There is no antecedent involving the appellant.

2. [6]. Accordingly, the impugned order is set aside and the appellant is granted bail, subject to the conditions that may be imposed by the Trial Court.

14. Given the above, the petitioner's pretrial custody is more than some of the judicial precedents mentioned above; the petitioner is entitled to bail under Article 14 of the Constitution of India.

15. Per the custody certificate dated 12.07.2025, the petitioner's custody in this FIR is of 01 year, 06 months and 07 days. Given the drugs were medicines that attracted violation of S. 22 of NDPS Act, viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations 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.

16. 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.

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



CONDITIONS:

17. 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.

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

1.	AADHAR number	
2.	3. 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)	

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

20. 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.

21. 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.

22. 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 Special Judge/ Sessions 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.

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

14.07.2025
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(ANOOP CHITKARA)
JUDGE

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