

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39521-2024 (O&M)
Reserved on: 07.07.2025
Pronounced on: 15.07.2025

Parwinder Singh Alias Khush
.....Petitioner(s)
Versus
State of Punjab
.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Inderpal Singh, Advocate for the petitioner(s)
Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J. (Oral)

FIR No.	Dated	Police Station	Sections
14	13.1.2024	City Kharar, District SAS Nagar, Mohali	18, 29, 61 NDPS Act

- 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.
- Per paragraph 12 of the bail petition, the petitioner has no criminal antecedents.
- The facts and allegations are taken from the status report dated 16.09.2024 filed by the State, which reads as under:

“3. That it is respectfully submitted that the brief facts of the present se/FIR No. 0014 (supra) are that on 13.01.2024, when ASI Harbhej Singh alongwith ASI Karanveer Singh and ASI Gurpreet Singh were going towards Kharar side from Mohali in connection with checking of suspicious vehicles and bad elements, at about 09:15 AM, two youngsters were seen sitting at Bus Stop Kharar waiting for someone. When ASI Karanveer Singh and ASI Gurpreet Singh asked to get their bags searched and upon searching the bags of both the youngsters by ASI Karanveer Singh and ASI Gurpreet Singh, transparent boxes containing opium were recovered from their respective bags Thereafter, ASI Karanveer Singh and ASI Gurpreet Singh apprised about the said fact to ASI Harbhej Singh, upon which ASI Harbhej Singh enquired about the name and identity of both the youngsters. The turbaned youngster disclosed his name as Parwinder Singh alias Khush (present petitioner) and another person disclosed his name as Shamsher Singh alias Kali. Thereafter, ASI Harbhej Singh served them notice under Section 50 NDPS Act and apprised them about their legal rights, upon which, they disclosed that they had nothing except the already recovered opium and agreed to get searched from the ASI. Accordingly, consent memos were prepared as per law and both the persons were searched and no other illegal/narcotic substance was

recovered from them.

4. That upon weighing the aforesaid opium alongwith their boxes, the same came out to be 2 kg 700 gm each. The boxes containing opium were put in separate cloth bags to prepare separate parcels and the parcels were sealed by ASI Harbhej Singh with his seal bearing impression "HS". Both the parcels were taken into police possession as per law. Hence, the present case/FIR was registered against Parwinder Singh alias Khush (petitioner) and Shamsher Singh under Section 18, 61,85, NDPS Act.”
4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
5. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody.
6. 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.
7. The State’s counsel opposes bail and refers to the reply.

REASONING:

8. As per paragraph 4 of the status report the petitioner along with co-accused was found in possession of 2 kg. 700 grams of opium and thus, 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.
9. 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:
10. In Md. Tajiur Rahaman v. The State of West Bengal, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon’ble Supreme Court holds,
 - [2]. The allegations are that upon receipt of a secret information, the police conducted a raid in which the petitioner and the co-accused Rabiul Alam were arrested and 4 kgs., 920 gms of opium latex was seized.
 - [4]. It is not in dispute that after filing of chargesheet and framing of charges, the trial has commenced but only examination-in-chief of P.W.1 has been completed. However, there are 12 witnesses, who are proposed to be examined by the prosecution.
 - [5]. It may be mentioned that the High Court while declining bail to the petitioner has directed for conclusion of trial within one year. But it seems that regardless thereto, the trial has not been expedited as no effective hearing took place for the last 2/3 dates. That being so, the conclusion of trial is likely to take some reasonable time. The petitioner does not have any criminal antecedents. He has already spent one year and six months in custody. The continued incarceration of the petitioner will not serve any

useful purpose.

[6]. Taking into consideration the period spent by the petitioner in custody and the fact that the petitioner does not have any criminal antecedents, we are satisfied that the conditions prescribed under Section 37 of the NDPS Act can be relaxed at this stage.

11. As per the custody certificate dated 04.07.2025, the petitioner is in custody for 1 Year, 5 Months and 16 days in this FIR.

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. 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.

CONDITIONS:

14. 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 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.

15. 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)

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

17. 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.

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

18. Given the background of allegations against the petitioner, it becomes paramount to protect 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 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.

19. 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."

20. 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."

21. **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.**

22. The concerned Judicial Magistrate/Trial Court is authorized to delete, modify, or relax any of the conditions mentioned above and is competent to do so in accordance with

the law.

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.

15-07-2025
AK

(ANOOP CHITKARA)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO