

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42893-2025
Reserved on: 08.09.2025
Pronounced on: 24.09.2025

VARINDER SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gaurav Kalsi, Advocate for the petitioner.

Mr. Jasdev Singh Thind, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
197	07.09.2023	Sadar Kharar, District SAS Nagar (Mohali)	22 and 29 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 10 of the bail petition and the status report, the petitioner has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 07.09.2023, the police officials were checking the vehicles, they noticed two persons were flustered which led to suspicion of having narcotic substance. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. The search led to recovery of 15,000 tablets of Lomotil from petitioner. In addition to that, the police had recovered 5100 tablets from co-accused Sunny.
4. It shall be relevant to refer to paragraphs 4 to 6 of the bail petition, which reads as follows:

“4. That the alleged recovery has been made in contravention of the provisions of the NDPS Act, no proper offer was given to the petitioner before conducting the search. The police party has not even bothered to call the

gazetted officer on the spot. Such non-compliance on the part of the police cast serious doubt on the story of the prosecution. It is the settled law that the any incriminating contraband, the possession of which is punishable under the NDPS Act, if recovered in violation of mandatory provisions of act, the same would be inadmissible and cannot be relied by the prosecution.

5. That it is relevant to mention here that the petitioner and the co-accused belongs to different villages. The petitioner didn't even know the co-accused Sunny. There is no possibility of presence of petitioner along with the co-accused on the place of occurrence. This also makes the story of the prosecution highly doubtful. Whatever have been alleged in the present FIR, the same seems to be manipulated by the prosecution.

6. That it is also an admitted fact that the place of occurrence is a public place, where people were moving from one way to the other for their routine work on cycles, by foot or on vehicles. However, there is none of the public witnesses, who have been joined in the police party at the time of the alleged recovery. It clearly shows that the police are indulging in paper work, while sitting in the police station and having no such occurrence took place and the petitioner has been apprehended from his home.”

5. Petitioner's counsel on instructions submits that he has no objection if while granting bail, this Court imposes any stringent conditions and undertakes that 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, where the sentence imposed is more than 07 years, he has no objection if the State files application for cancellation of his bail.

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

REASONING:

7. It shall be relevant to refer to para 6 B, C, D of the reply, which reads as follows:

“B. The evidence based on which the petitioner was arraigned as an accused: On 07.04 2023 when police officials was present on Landran-Kharar road in front of at Ansal Golf Link in connection with the checking of vehicles coming from the Landran side and it was about 03:30 PM, then present petitioner Varinder Singh along with co-accused Sunny were stopped on the basis of suspicion. Upon checking, 250 stripes of 'Lomotil' tablets (each strip containing 60 tablets) i.e. 15000 intoxicant tablets were recovered from the conscious possession of petitioner Varinder Singh, while, 85 strips of 'Lomotil' tablets (each strip containing 60 tablets) i.e. 5100 intoxicant tablets were recovered from the search of co-accused Sunny and in

this way total 20,100 tablets were recovered from both the accused, regarding which they could not produce any permit or license for keeping the same in their possession.

C. The evidence against the petitioner: *As per FSL report dated 10.11.2023, on the basis of analysis, Diphenoxylate Hydrochloride has been found present in the tablets. It is clarified that the average weight of each tablet is 63 mg per tablet and thus, the total weight of alleged contraband i.e. 15000/- tablets of 'Lomotil' containing salt Diphenoxylate Hydrochloride recovered from the petitioner, comes out to be 945 gm which is commercial quantity.*

D. The role of the petitioner: *The alleged recovery of 15000 tablets containing Diphenoxylate Hydrochloride from the petitioner falls under commercial quantity as per the entry no.44 of the schedule attached with NDPS Act and its commercial quantity is 15 gm as per NDPS Act."*

8. As per paragraph 6A of the reply, the name of the contraband is **Diphenoxylate Hydrochloride**, and its weight is 945 grams.

9. Dealing in 945 grams of **Diphenoxylate** in contravention of the NDPS Act, 1985, constitutes an offense under the following provisions and notifications:

Substance Name	Diphenoxylate
Quantity detained	945 Gram
Punishable U/s	S.21(c) of NDPS Act, 1985
Quantity type	Commercial
Drug Quantity in % to upper limit of Intermediate	1890.00%

Drug's Small & Commercial Qty. suggested by Committee report	
Notification No. & date	Expert Committee Report dated 24.03.1995 & 23.08.2001 (Small and Commercial)

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	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

0

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.826(E)	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 diphnoxybate 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.

10. 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.
11. Per the custody certificate dated 11.08.2025, the petitioner's custody in this FIR is as of now is more than 02 years.

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. The petitioner is entitled to bail because, in somewhat similar cases where the quantity involved was either greater than or close to the amount seized in the current FIR, the Hon'ble Supreme Court has granted bail after prolonged custody, as demonstrated by the following judicial precedent.

14. In *Junaid Alam v. State of Uttarakhand*, decided on 12 Aug 2024, SLP(Crl.) 7708-2024, Hon'ble Supreme Court holds,

12. [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.

13. [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.

14. [4]. We have perused the nature of the Contraband i.e., the prohibited medicines (SYP Codectus 100 Bottles (100 MI each), Cap Pyeevon Spas Plus 720 Cap Parvion Spas 800 Capsules, Spasonof NF 960 capsules, Capsules Spasmoproxyvon Plus 144, Proxywell Spas 2568 Capsules, Alprasafe Table 600 Tablets, Pyeevon Spas Plus 32 Capsules).

15. [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. 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:

16. Given the 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, with or without sureties, with a maximum bond amount not to exceed INR 25,000.

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

17. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, the surety is capable of producing the accused. However, instead of surety, the petitioner may provide a fixed deposit of INR 25,000/-, with a clause that the interest shall not be accumulated in FD, either drawn from a State-owned bank or any bank listed on the National Stock Exchange and/or Bombay Stock Exchange, in favour of the “Chief Judicial Magistrate” of the concerned Sessions Division; or a fixed deposit made in the name of the petitioner, with similar terms and with endorsement from the banker stating that the FD shall not be encumbered or redeemed without the permission of the concerned trial Court, or until the surety bond has been discharged.

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

16. 1.	17. AADHAR number
18. 2.	19. Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.
20. 3.	21. Mobile number (If available)
22. 4.	23. 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, detention 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 society; it would also restrain the accused from influencing the witnesses and repeating the offense.

22. 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."

23. 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."

24. The significant consideration for granting bail is that the Court aims to give the petitioner another chance to course-correct, reform, and reintegrate into the community as an ideal citizen. To ensure that the petitioner also abides by the assurance made on the petitioner's behalf by not repeating the offence or indulging in any crime, it shall be desirable to impose the following additional condition.

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 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.

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. In *Amit Rana v. State of Haryana*, CRM-18469-2025 [in CRA-D-123-2020, decided on 05.08.2025], a Division Bench of Punjab and Haryana High Court in paragraph 13, holds that "To ensure that every person in judicial custody who has been granted bail or whose sentence has been suspended gets back their liberty without any delay, it is appropriate that whenever the bail order or the orders of suspension of sentence are not immediately sent by the Registry, computer systems, or Public Prosecutor, then in such a situation, to facilitate the immediate restoration of the liberty granted by any Court, the downloaded copies of all such orders, subject to verification, must be accepted by the Court before whom the bail bonds are furnished."

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

24.09. 2025
renubala

(ANOOP CHITKARA)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: No.