

CRM-M-52135-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52135-2024
Reserved on: 06.02.2025
Pronounced on: 14.02.2025

Tarun Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mitul Singh Rana, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0050	30.08.2024	Hajipur, District Hoshiarpur, Punjab	61 of Punjab Excise Act 1914

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 5 of the bail petition as well as the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	183	22.11.2017	61/1/14 of Excise Act	Mukerian, District Hoshiarpur
2	14	2022	61 of Excise Act	Mukerian, District Hoshiarpur
3	1	06.01.2024	61/1/14 of Excise Act	Mukerian, District Hoshiarpur

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“That it is submitted that on 30.8.2024, when the police party while on patrol duty, in order to search for miscreants, reached bridge canal village Bhavnal, from the side of village Buddawar, the petitioner was spotted coming on scooter No.PB-18-D-7583 marka Bajaj Chetak having one bag on footrest of the scooter and other bag on the rear side tied with

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rope and the petitioner was intercepted on the basis of suspicion and 30 polythene bags from front side and 70 polythene bags from rear side of the scooter were recovered from the petitioner and on measuring it, became total 199 of illicit liquor bottles of 750/750 ml and one bottle 570 ml and as such 1,50,000 M.L. illicit liquor was recovered from the petitioner and the recovery effected from the petitioner was taken into police possession and therefore, the petitioner committed offence U/s 61/1/14 of Excise Act by keeping illicit liquor 1,50,000 M.L., in his possession, accordingly FIR No.50 dated 30.08.2024 U/s 61/1/14 Excise Act was registered at P.S. Hajipur, District Hoshiarpur against the petitioner.”

4. The petitioner's counsel submits that he be given indulgence on the ground of custody i.e. 05 months & 05 days. He further 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.

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

6. It would be appropriate to refer to the following portions of the reply, which read as follows:

“4. Role of the petitioner

That it is submitted that the present case was registered against the petitioner on recovery of 1,50,000/- ML illicit liquor from the petitioner. The petitioner is habitual offender and four cases of same nature have already been registered against the petitioner. Therefore, the present petition is liable to be dismissed.”

REASONING:

7. Pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. As Per the custody certificate dated 05.02.2025, the petitioner's total custody in this FIR is 05 months & 05 days. Given the penal provisions invoked 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 further pre-trial incarceration at this stage.

8. 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.

9. 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

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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.

10. 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)	

11. 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.

12. In Vikash Kumar Gupta V. The State of Bihar, SLP 11952-2024, Decided on 11-09-2024, a Three-member Bench of Hon'ble Supreme Court, while granting bail, holds,
(ii) Since the petitioner has a track record of his involvement in cases under the Excise Act, it is directed that in case the petitioner is found involved in such like cases in future, it shall be taken as a misuse of the concession of bail.

13. The petitioner shall not repeat the offence and shall be bound by the abovementioned condition.

14. Given the background of allegations against the petitioner, it becomes paramount to protect the illicit liquors detection squad and their family members, as well as 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 firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond 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 from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in 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.

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15. 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 Hon'ble Supreme Court holds 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."

16. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.**

17. The concerned trial court is authorized to delete, modify, or relax any of the above conditions and shall be competent to do so in accordance with the law.

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

19. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

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

(ANOOP CHITKARA)
JUDGE

14.02.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.