



7.	221	22.09.2020	61-1-14 Excise Act	Sadar Nabha, District Patiala
8.	19	26.02.2021	323/365/342/380/458/ 341 of IPC	Amloh, District Fatehgarh Sahib
9.	85	20.06.2023	380/458 of IPC	Kotwali Nabha, District Patiala
10.	62	16.06.2024	457/380/411/379-B of IPC	Amargarh, District Malerkotla

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

"on 27.02.2021 ASI Kapil Kumar along with other police officials were present at Sherpur Chownk in connection with patrolling duty and checking of suspected persons, then the said ASI received secret information that the present petitioner, Kulwant Kumar Sharma, Arjun Kumar and Sukhdev Singh are indulged in selling intoxicant powder and illicit liquor. It was further informed that today the petitioners and others are coming on a Swift car No. PB-34-B-0408 from the side of Giaspura towards Dholewal to supply heavy quantity of intoxicant powder and illicit liquor and if Nakka is laid at apprehended Sherpur Chownk, then they can be apprehended with heavy quantity powder and illicit liquor."

4. Counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR and no contraband has been recovered from him. He further prays for bail by imposing stringent conditions and on instructions submits that the 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, he has no objection if the State files application for cancellation of his bail. He further contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

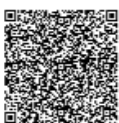
5. The State's counsel opposes bail and refers to the reply.

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

"During the personal search of accused Kulwant Kumar Sharma, 50 grams intoxicant powder and one "Daat", were recovered. Similarly during the personal search of accused Arjan Kumar, 20 grams intoxicant powder and one "Gandaasi", recovered. Similarly during the personal search of accused Sukhdev Singh,, 10 grams intoxicant powder and one iron "Cutter", were recovered. Accordingly the petitioner and his co-accused were arrested on 27.02.2021."

REASONING:

7. Nothing has been recovered from the petitioner and he was sitting on a passenger seat



and the car was being driven by co-accused Kuwant Kumar Sharma @ Bunty. Contraband was recovered from the co-accused and boxes of liquour were recovered from the car of the co-accused, at this stage no ground is made out to deny bail to the present petitioner. 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. However, per paragraph 8 of the status report, the petitioner has been in custody since 12.07.2024. 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 for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

8. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

9. 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.

CONDITIONS:

10. 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 Ilqa 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.

11. 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)	

12. This order is subject to the petitioner's complying with the following terms.

13. 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.

14. 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,



4. (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.

15. The petitioner shall not repeat the offense and shall be bound by the abovementioned condition.

16. 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.

17. 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."

18. **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.**

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

20. 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.



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

29.04.2025
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(ANOOP CHITKARA)
JUDGE

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