

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-63500-2024
Reserved on: 03.03.2025
Pronounced on: 28.03.2025

Balwinder Kumar @ Kaka ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. M.S. Saini, Advocate
for the petitioner.

Mr. Adesh Pal Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
209	17.12.2023	Garhshankar, District Hoshiarpur	22, 29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from translated version of FIR, which reads as follows:

“To, the Station House Officer, Police Station Garhshankar, Jai Hind, today myself Inspector along with ASI Vasudev No. 849.hsr, ASI Balvir Singh N. 520/HPR, L/CT Parveen Kaur No. 862/HSP, PGH Paramjit Singh No. 26675 on private vehicle carrying laptop and printer along with investigating kit were going from Beenewal to Kokowal Majari side in connection with patrolling and search of bad elements and when the police party was at some distance back from Kokowal Majari then at around 4.30 PM, a person having Hindu personality seen coming from front side who Wan carrying a heavy polythene bag in his right hand and on looking the police party, suddenly be got perplexed and turned back, then on having doubt, myself Inspector have stopped our vehicle and apprehend the said persons with the help of associate officials and asked his whereabouts, then he disclosed his name as Balwinder Kumar @ Kaka son of Gurdas Ram resident of village

Dalewal, Police Garhshankar, Station District Hoshiarpur aged about 53 year, then myself Inspector has informed him about my name, rank and posting and told him that I have doubt that there is some intoxicant material in your possession, therefore the search of you and the heavy polythene bag carrying in your right hand is to be conducted but you have legal right that you can get done the search of you and your polythene bag through any Magistrate of Gazetted officer, who can be called to the spot or you can be taken before him, then the said person has replied that I have trust upon you, you can conduct the search of me and heavy polythene bag carrying in my right hand, therefore notice under section 50 of NDPS Act has been given to Balwinder Kumar @ Kaka statement has and his consent been recorded, which is signed by Balwinder Kumar @ Kaka in Punjabi and witnesses have also appended their respective signatures. Prior to conduct the search of Balwinder Kumar@ Kaka and the heavy polythene bag carrying in his right hand, the effort have been made to join any public witness in the police party but everybody shown their helplessness and has not joined the police party, therefore myself inspector have conduct the search of heavy polythene bag carrying in right hand of Balwinder Kumar @ Kaka in the presence of associate officials then 9 strip of intoxicant tablets, each strip contains 10-10 tablets make Etizolam Tablets 0.5mg Make ETIRON 0.5 having Batch No. MT-22474, MFG date March/2023 and Expiry date Feb/2025 are recovered, ed, which have been put into same polythene bag and after turning the same into parcel, sealed the parcel with seal bearing impression KS and also prepared the sample of seal and the recovered material has been taken into the possession of police through seizure memo and after using seal the same is handed over to ASI Vasudev No. 849/HPR. Above said Balwinder Kumar @ Kaka could not produce any license or permit to keep the said intoxicant material in his possession who have committed offence under section 22-61-85 of NDPS Act by keeping 90 intoxicant tablets Etizolam Tablets 0.5 mg make ETIRON 0.5, therefore after writing Ruga, the same is being sent to the Police Station by the hand of PHG Paramjit Singh No, 26675, after register case, number of the same be intimated. After issuing special reports the same be sent to the police officers and control room also be intimated. Myself inspector along with associate officials is busy for investigation at the spot.”

4. 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.
5. The State's counsel opposes bail and refers to the status report.
6. Petitioner's first bail petition i.e. CRM-M No.41456 of 2024 was dismissed on merits vide order dated 27.11.2024. Petitioner has again come up before this Court on the ground that the main point of submission which is mentioned in para no.9 of the bail petition was not discussed in the reasoning.

7. I have heard counsel for the parties and have gone through the petition as well as reply dated 24.01.2025 filed by concerned DySP. The translated copy of FIR is annexed as Annexure P-1 and its translation is not disputed. It would be appropriate to reproduce the relevant portion of FIR which reads as follows:

“therefore myself inspector have conduct the search of heavy polythene bag carrying in right hand of Balwinder Kumar @ Kaka in the presence of associate officials then 9 strip of intoxicant tablets, each strip contains 10-10 tablets make Etizolam Tablets 0.5mg Make ETIRON 0.5 having Batch No. MT-22474, MFG date March/2023 and Expiry date Feb/2025 are recovered, which have been put into same polythene bag and after turning the same into parcel, sealed the parcel with seal bearing impression KS and also prepared the sample of seal and the recovered material has been taken into the possession of police through seizure memo and after using seal the same is handed over to ASI Vasudev No. 849/HPR.”

8. After that, the case property was produced before the concerned Magistrate in compliance of Section 52-A of NDPS Act. It would be appropriate to refer to the order passed under Section 52-A of NDPS Act which reads as follows:

“An application has been moved before the undersigned, being Illaga Magisuate, under Section 52-A (2) of ND&PS Act on the prescribed Form-5 as per Rule 8 and Rule 18(1) along with the inventory Form-4, for certification of the conjectures of inventory and to draw samples of the seized intoxicant and to get the phoregraplis of the proceedings clicked. Case property/parcels mentioned in Thale No.1 below has been produced before the undersigned:-

Table No.1

Sr No.	Parcel Type	Name of Contraband (as provided by Investigating Agency	Quantity of Contraband	Sealed with seals bearing impressio n
1	Lot 1 parcel	Intoxicant tables (Etizolam tablets 0.5 mg)	9 strips in number (10 tablets each)	KS & JP
2	Lot 2 parcel	Intoxicant tables (Etizolam tablets 0.5 mg)	7 strips in number (10 tablets each)	KS & JP
3	Lot 3 parcel	Intoxicant tables (Alprazolam and Propranolol Hydrochloride tablets (Batch No.22-D-003)	4 strips in number (10 tablets each)	KS & JP

2. The above mentioned case property is in sealed condition and

the seals bearing impression KS & JP were intact. The undersigned has also checked number and impression of seals on the bulk parcels (mentioned in table No.1) and has also compared with the particulars mentioned in inventory/Form No.4. Case property seen.

3. In the presence of undersigned, Lot 1 parcel, Lot 2 parcel Vand Lot 3 parcel were opened by the I.O. As for Lot No.1 parcel and Lot No.2 parcel, the strips of tablets detailed in the chart herein-before did not carry any specific batch number. Consequently, both the parcels of Lot 1 and Lor 2 were treated as sample with all its rontenis. As for, Lot No.3 parcel which is alleged to have been recovered from Suldidev Kumar @ Bitu, there are total four strips, each of which carry same batch number as mentioned in table No.1. Consequently, out of four strips, two samples of one strip each are drawn separately. Thereafter all the samples were put in coperate paper envelopes after putting the same in different plastic bags, as per rules. Three seals of Investigating Officer bearing impression 'KS' have been affixed on each paper envelopes. Thereafter, three seals of undersigned bearing impression 'GS' have also been affixed on the above said paper envelopes. The samples drawn are detailed as under:-

Table No.2

Sr No.	Parcel Type	Name of Contraband (as provided by Investigating Agency	Quantity of Contraband	Sealed with seals bearing impressio n
1	Lot 1 (Original) total treated as sample	Intoxicant tables (Etizolam tablets 0.5 mg)	9 strips in number (10 tablets each)	KS & GS
2	Lot 2 (Original) total treated as sample	Intoxicant tables (Etizolam tablets 0.5 mg)	7 strips in number (10 tablets each)	KS & GS
3	Lot 3 (bulk)	Intoxicant tables (Alprazolam and Propranolol Hydrochloride tablets (Batch No.22-D-003)	2 strips in number (10 tablets each)	KS & GS
4	Lot 3A (Sample No.1)	Intoxicant tables (Alprazolam and Propranolol Hydrochloride tablets (Batch No.22-D-003)	1 strips in number (10 tablets each)	KS & GS
5	Lot 3B (Sample No.2)	Intoxicant tables (Alprazolam and Propranolol Hydrochloride tablets (Batch No.22-D-003)	1 strips in number (10 tablets each)	KS & GS

9. Comparison of the FIR as well as Section 52-A of NDPS Act reveals that batch number was mentioned in FIR whereas no batch number was mentioned in Lot-1 and Lot-2 whereas in order passed under Section 52-A of NDPS Act, no batch number was mentioned in Lot-1 and Lot-2 whereas Batch No.22-D-003 was mentioned in Lot-3. This coupled with the fact that petitioner has also undergone custody of 10 months, further pre-trial incarceration would not be justified. It is clarified that the prosecution is at liberty to explain this contradiction at the time of trial and the observations made in this order shall not be construed by the trial Court at any stage. It is further clarified that these observations are only for the purpose of bail.
10. There is sufficient primafacie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing.
11. As per custody certificate dated 01.03.2025, the petitioner's total custody in this FIR is 10 months.
12. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie 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.
13. 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.
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/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.

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

20. It is clarified that if the petitioner violates any bail condition, the State may file an application for bail cancellation before the trial court, which shall be competent to cancel the bail or add more conditions. Furthermore, if the petitioner moves for deletion or dilution of any bail conditions, the trial court is empowered to do so.

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

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

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23. 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.

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

(ANOOP CHITKARA)
JUDGE

28.03.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.