

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45190-2024
Reserved on: 02.04.2025
Pronounced on: 22.04.2025

Kamlesh Rani @ Kamlesh Kaur @ Babbu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Harkirat Singh Bhogal, Advocate, for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

ANOOP CHITKARA, J.

| FIR No. | Dated | Police Station | Sections |
|---------|------------|--------------------------------|-----------------------|
| 93 | 30.09.2023 | Mehtiana, Distt. Hoshiarpur | 22 and 29 of NDPS Act |

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. In the bail application, the petitioner is silent about criminal antecedents. However, as per paragraph 13 of the status report dated 08.11.2024, the accused has the following criminal antecedents:

| Sr. No. | FIR No. | Dated | Offenses | Police Station |
|---------|---------|------------|-------------------------|----------------------------------|
| 1. | 29 | 21.02.2016 | 22/61/85 of NDPS Act | Mehtiana, District Hoshiarpur |
| 2. | 82 | 15.09.2023 | 29/22/61/85 of NDPS Act | Mehtiana, District Hoshiarpur |

3. The facts of the case are being from the copy of police report filed under Section 173 CrPC annexed with the status report. On 30.09.2023 the investigator alongwith his team was patrolling in a private vehicle carrying a laptop and a printer in it. While patrolling, they suspected a motorcycle, which has driven by a male and a female was the pillion rider. On seeing the police, the driver of the motorcycle flustered and turned back his bike which raised suspicion. During such exercise, he lost control over the motorcycle and a black envelope which was hanging on the handle of the motorcycle also fell on the ground. After that, the police claimed to have been conducted the legal requirements of NDPS Act and CrPC and weighed such substance which was found to be 245 grams. As per the chemical report, the contents of the powder was alprazolam. Since the quantity greater than 100 grams of alprazolam falls in commercial quantity, as such, rigors of

Section 37 of NDPS Act would apply.

4. The petitioner's counsel submits that the petitioner shall not indulge herself in the offence involving the commercial or intermediate quantity or the offence which falls under Sections 19/24/27-A of the NDPS Act. He further submits that if the petitioner involves herself in the said offences, he has no objection if the State files an application for cancellation of bail. He further submits that further pre-trial incarceration would cause an irreversible injustice to the petitioner and her family.

5. The State's counsel opposes bail and refers to the status report dated 08.11.2024.

6. It would be appropriate to refer to para following portions of the status report dated 08.11.2024, which reads as follows:

“Role of petitioner

11. That it is submitted that the present FIR was registered at P.S. Mehtiana, District Hoshiarpur against the petitioner and Dalwinder Singh @ Binder on recovery of 245 grams intoxicant powder, while the accused Dalwinder Singh @ Binder was driving the motorcycle and petitioner was sitting behind the motorcycle. The accused Dalwinder Singh @ Binder turned his motorcycle to the backside on seeing the police party and then one black colour polythene fell down from the handle of motorcycle. Recovery of 245 grams of intoxicated powder was found after checking the black polythene. During the investigation of this case, it was verified that petitioner and co-accused Dalwinder Singh @ Binder are in live in relationship with each other and are also involved in the drug smuggling business. Subsequently, offence U/s 29 NDPS Act, 482, 379, 411 IPC was added to the present FIR. As per FSL report, recovery effected from the petitioner contains Alprazolam salt and as such recovery effected from the petitioner falls within the category of commercial quantity. Therefore, the present petition is liable to be dismissed.

Evidence against the petitioner

12. That it is submitted that in the present case, 245 grams intoxicant powder was recovered from the petitioner and his co-accused the Dalwinder Singh @ Binder, subsequently offence U/s 22/29-61-85 NDPS Act, 482, 379, 411 IPC. As per FSL report, contraband recovered from the petitioner and his co-accused Dalwinder Singh @ Binder contains Alprazolam salt and the recovery effected from the petitioner and his co-accused Dalwinder Singh @ Binder falls within the category of commercial quantity.”

REASONING:

7. Even as per the prosecution's case, the petitioner was only sitting as a pillion rider Dalwinder Singh, who was the driver of the motorcycle and flustered on seeing the police officials and tried to reverse his motorcycle, which had fallen and due to this, a polythene bag hanging on the handle of the motorcycle also fell, which revealed the presence of intoxicant substance. It means that the contraband was hanging from the handle of the motorcycle and the handle of the motorcycle is in the hands of the driver of the motorcycle, which was Dalwinder Singh not the petitioner. Given the undertaking by the counsel for the petitioner that the petitioner shall not indulge herself in the offence involving the commercial or intermediate quantity or the offence which falls under Sections 19/24/27-A of the NDPS Act. He further submits that if the petitioner involves herself in the said offences, she has no objection if the State files an application for cancellation of bail, as such, the petitioner is entitled to bail.

8. 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.

9. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[31]. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

10. Given this, the criminal antecedents are also not legal grounds for denying the rigors of S. 37 of the NDPS Act at this stage.

11. However, the petitioner is entitled to bail because Hon'ble Supreme Court had

granted bail on prolonged custody in the following judicial precedents:

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

[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.

[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.

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

[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.

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. In *Tajmul SK v. The State of West Bengal*, decided on 23 Jul 2024, CrA 3047-2024, Hon'ble Supreme Court holds,

[5]. We are inclined to set aside the impugned order only on the premise that right to speedy trial is a fundamental right. Despite the fact that the appellant has been under incarceration for more than one and a half years, the trial is yet to start, though, it is submitted by learned counsel appearing for the State that charges have been framed. Suffice it is to state that trial would take considerable length of time. There is no antecedent involving the appellant.

[6]. Accordingly, the impugned order is set aside and the appellant is granted bail, subject to the conditions that may be imposed by the Trial Court.

14. Given the above, the petitioner's pretrial custody, petitioner is entitled to bail under Article 14 of the Constitution of India.

15. As per the custody certificate dated 01.04.2025, the petitioner's custody in this

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

FIR is of 01 year, 03 months and 05 days. Given the drugs were medicines that attracted violation of S. 22 of NDPS Act, 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.

16. 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.

CONDITIONS:

17. 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.

18. 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) | |

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, detection 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 the victim(s), their families, and 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 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."

23. In *Md. Tajiur Rahaman v. The State of West Bengal*, decided on 08-Nov-2024, SLP (Crl) 12225-2024, 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. ***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 Trial Court, which shall be at liberty to cancel this bail.***

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

26. 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.

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

**(ANOOP CHITKARA)
JUDGE**

**22.04.2025
Jyoti-II**

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|----------------------------|-----|
| Whether speaking/reasoned: | Yes |
| Whether reportable: | No. |