

CRM-M-18615-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-18615-2025  
Reserved on: 06.05.2025  
Pronounced on: 19.05.2025

Dalwinder Kumar alias Binder

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. I.P.S. Deol, Advocate  
for the petitioner.

Mr. Sukhwinder Singh Rai, DAG, Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
93	30.09.2023	Mehtiana, District Hoshiarpur, Punjab	22 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. Per paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts and allegations are taken from the translated copy of FIR (Annexure P1). On 30.09.2023 when police officials were on patrolling, they saw a young man on motorcycle and on the pillion seat there was a lady sitting. On seeing the police driver of the motorcycle fluttered and turned his bike, due to which, bike slipped and they fell down. There was a bag hanging on handle of the bike and on seeing the conduct of the accused, it raised suspicion and police inquired about their name. Driver of the motorcycle disclosed his name as Dalwinder Kumar (petitioner herein) and the woman who was sitting on pillion seat, told her name as Kamlesh Kaur. After that the investigator raised suspicion about their transporting narcotic substance and consequently they claim to have complied with the provisions of Section 50 of NDPS Act. Thereafter the bike was searched and recovery of 245 grams of intoxicant power was effected, which was later on found to be Alprazolam.

4. The Investigator claims to have complied with all the statutory requirements of

CRM-M-18615-2025

the NDPS Act, 1985, and CrPC, 1973.

5. The petitioner's counsel submits that petitioner had earlier also filed bail petition bearing number CRM-M-37788-2024, in which this Court had discussed the merits and case was dismissed. Now the petitioner seeks bail on the grounds of prolonged pretrial custody.

6. 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.

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

**REASONING:**

8. As per para 7 of reply, the name of drug is Alprazolam.

9. 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.

10. The petitioner is entitled to bail because for the same drug and when the quantity involved was either more or closer to the quantity seized in the present FIR, Hon'ble Supreme Court had granted bail on prolonged custody in the following judicial precedents:

11. In *Ajay Khatri v. The State of Rajasthan*, Decided on 20-03-2025, SLP (Crl) No. 1228-2025, Hon'ble Supreme Court holds,

The case of the prosecution is that 6600 Alprazolam Tablets weighing 818.4 grams have been recovered from his possession. He has already undergone more than one year in jail.

Considering the period of incarceration of the petitioner, we are of the opinion that a case of bail is made out for the petitioner and therefore, the prayer for bail is allowed.

12. Per the custody certificate dated 05.05.2025 the petitioner's custody in this FIR is of 01 year, 07 months & 03 days.

13. 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 Act<sup>1</sup>.

14. Following the judicial precedent mentioned above, without commenting on the

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

CRM-M-18615-2025

case's merits, and considering the petitioner's pre-trial custody, weight of the drugs, and absence of any criminal antecedents coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage. However, this order shall come into force from the time it is uploaded on this Court's official webpage.

**CONDITIONS:**

15. 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.

16. 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)

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

18. 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.

19. 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

CRM-M-18615-2025

influencing the witnesses and repeating the offense.

20. 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."

21. 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."

22. **This bail is conditional, and the foundational condition is that if the petitioner repeats the offence 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, then the State may file an application for cancellation of this bail before the Trial Court, which shall have discretion to cancel this bail.**

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

24. A certified copy of this order is not required for furnishing bonds. An Advocate for the Petitioner can download the order from the Court's official web page and attest it as a true copy. If needed, the attesting officer can verify its authenticity online and use the downloaded copy to attest bonds.

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

(ANOOP CHITKARA)  
JUDGE

19.05.2025  
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Whether speaking/reasoned: Yes  
Whether reportable: No.