

CRM-M-39903-2024

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

CRM-M-39903-2024
Reserved on: 19.03.2025
Pronounced on: 27.03.2025

Sushil Kumar @ Tinku

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Puneet Sharma, Advocate (Through VC)
for the petitioner.

Mr. Naveen K. Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
387	10.11.2023	Chhapar, District Yamuna Nagar	302/328, 120B, 201 IPC and 72A of Excise Act (charges framed u/s 120-B, 420, 467, 468, 471 IPC)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 BNSS, seeking regular bail.

2. In paragraph 14 of the bail petition, petitioner declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	451	11.11.2023	120-B, 201, 204, 302, 328, 420, 467, 468, 471 IPC, 72(A) of Excise Act	Chappar, Distt. Yamunagar
2	249	08.11.2023	302, 307, 326, 328, 201, 420, 467, 468, 471, 120B IPC and 72(a) of Excise Act	Farakpur, Distt. Yamunanagar
3	300	--	420 IPC and 61(1) of Excise Act	---

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

“3.it is submitted that on 09-11-2023 information regarding the death of Jagmal S/o Nasib Lal due to intoxication of "Desi Alcohol was received at the Police Station and thereupon the police party reached at the Civil

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Hospital, Trauma Centre, Yamuna Nagar where the son and wife of the deceased namely Mohit Kumar (son) and Saroj Bala (wife) met the police party but they did not made any statement to the police and on 10.11.2023 Mohit Kumar s/o Jagmal made his statement to the police alleging the death of his father by consuming liquor purchased from Raj Kumar @ Babli, Naresh Kumar @ Khuba, Rajesh Kumar, Radhey etc.

4. That on the basis of the above-mentioned statement initially, the above-mentioned FIR No. 387 dated 10-11-2023 Under Section 304, 328 of IPC, 1860 & 72(A)-4-2020 Excise Act was registered at Police Station Chhappar, District Yamuna Nagar. In this regard, the copy of above said FIR is already annexed with the main petition as Annexure P-1. Hence, the contents of FIR are not being reproduced here for the sake of brevity.”

4. The petitioner's counsel submitted that charges under Section 302 IPC were not framed against the petitioner, however qua other offences charges have been framed. 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 dated 03.02.2025, which read as follows:

“Role of the petitioner That with regard to the role of the petitioner in the present case, it is submitted that the petitioner hatched criminal conspiracy with co-accused Gaurav R/o Thamber etc. to sell illegal liquor. In pursuance of said criminal conspiracy, the petitioner and his co-accused namely Gaurav R/o Thamber used to supply spurious and illicit liquor in the Bolero vehicle bearing number HR-05-AD-5507 The petitioner and his co-accused Gaurav sold said liquor to Rakesh alias Radhe Shyam and Subhash residents of Saran in village Saran at the rate of Rs.1050/- per box. On 06.11.2023, petitioner and co-accused Gaurav R/o Thamber had given 15 boxes of country liquor to Subhash, out of which Subhash had given 8 boxes to Rakesh alias Radhe and sold the remaining liquor to different people. Apart from these two, petitioner had also sold 11 boxes of fake country liquor to Raj Kumar alias Babli resident of Saran on the same day. Out of these 11 boxes of spurious liquor, 5 boxes were sold to co-accused Naresh and Surendra S/o Mangal Singh and 3 boxes were sold to Rajesh S/o Puran Chand and the remaining three boxes were kept with the accused Raj Kumar himself. One of the bottles supplied by the petitioner led to the death of one Paramjeet and several others. The petitioner along with others co-accused persons illegally sold the said

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spurious and poisonous liquor. Several persons had consumed the liquor supplied by the petitioner which resulted in their death. Thus, the petitioner played active role in the commission of offence. The petitioner along with his co-accused has committed the aforesaid offences in a planned way.”

REASONING:

7. Perusal of the order dated 04.03.2025 passed by the trial Court, reflects that charges were framed against the petitioner under Sections 120-B, 420, 467, 468, 471 IPC and no offences u/s 302, 328, 201 IPC and Section 72A of Excise Act is made out against the 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 10 of the bail petition, the petitioner has been in custody since 19.01.2024. The petitioner's total custody in this FIR is around 01 year & 02 months. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, offence involved against the petitioner 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.

CONDITIONS:

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

12. 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

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Court.

13. 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.

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

15. 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.

16. 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."

17. ***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.***

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.

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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

27.03.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.