

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34914-2024
Reserved on: 15.01.2025
Pronounced on: 27.01.2025

Kamaljit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Avtar Singh Bhatti, Advocate for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab
Assisted by ASI Gurdeep Singh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
154	26.06.2024	Model Town, District Hoshiarpur	22 of NDPS Act (29 of NDPS Act added later on)

- The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 of Cr.P.C., seeking anticipatory bail.
- As per paragraph 8 of the bail application and the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	202	20.08.202 1	21/61/85 of NDPS Act	Model Town, District Hoshiarpur
2.	19	24.01.202 2	21/29/61/85 of NDPS Act	Model Town, District Hoshiarpur
3.	60	13.02.202 3	21/61/85 of NDPS Act	Model Town, District Hoshiarpur

- The facts and allegations are taken from the reply filed by the State. On June 26, 2024, based on chance recovery, the Police seized 65 grams of Alprazolam powder from the possession of co-accused Navdeep Kumar alias Kali. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. During custodial interrogation, the co-accused Navdeep Kumar alias Kali, confessed before the Police officer that he was deputed by the petitioner to supply the intoxicant. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 438 Cr.P.C.

5. 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.

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

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

"That it is submitted that the present case was registered against the co-accused Navdeep Kumar Kali on recovery of 65 grams intoxicated powder. The petitioner was nominated in the present case on the confession statement of the co-accused Navdeep Kumar @ Kali and the co-accused Navdeep Kumar @ Kali stated in his confession statement that the petitioner gave him his Activa and intoxicated powder for supplying the intoxicated powder to his customer."

8. Dealing in 65 grams of Alprazolam is a punishable offense under the NDPS Act in the following terms:

Substance Name	ALPRAZOLAM
Quantity detained	65 Gram
Quantity type	Intermediate
<i>Drug Quantity in % to upper limit of Intermediate</i>	65.00%

Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No.	S.O.1055(E)
dated	10/19/2001
Sr. No.	178
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	ALPRAZOLAM
Other non-proprietary name	*****
Chemical Name	8-chloro-1-methyl-6-phenyl-4H-s-triazolo[4,3-a][1,4] benzodiazepine
Small Quantity	5 gram

Commercial Quantity	100 gram
Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) &2(xxiii) NDPS Act, 1985	
Notification No	NDPS Act, 1985 (61 of 1985), S.O. 821(E)
dated	11/14/1985
Sr. No.	30
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	ALPRAZOLAM
Other non-proprietary name	*****
Chemical Name	8-chloro-1-methyl-6-phenyl-4H-s-triazolo [4,3-a][1,4] benzodiazepine

9. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

10. Section 2 (vii-a) of the NDPS Act defines commercial quantity as greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

11. The petitioner's other difficulty is his massive criminal history of similar cases. However, considering the quality of evidence, even the criminal history can be ignored as a reason to deny bail, subject to the condition that the petitioner does not repeat the offence.

12. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

13. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible. A perusal of the reply does not point out the steps

taken to arrest the accused.

14. Given the above, the penal provisions invoked 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 custodial interrogation or the pre-trial incarceration at this stage. 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 anticipatory bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

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 Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/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. The bail order is subject to the petitioner's complying with the following terms.

18. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Harvana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent

language, inhuman treatment, etc.

19. 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.

20. Given the background of allegations against the petitioner, it becomes paramount to protect 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 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.

21. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

22. 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.”

23. **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.**

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

25. 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.

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

(ANOOP CHITKARA)
JUDGE

27.01.2025
M.Sikka

Whether speaking/reasoned: Yes
Whether reportable: No.