

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37488-2024
Reserved on: 07.08.2025
Pronounced on: 27.08.2025

Avtar Singh @ Saba

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rishu Mahajan, Advocate,
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
74	26.06.2018	Jhabal, Tarn Taran	302, 307, 34 IPC and 21 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court second time under Section 439 CrPC, seeking regular bail.

2. As per paragraph 16 of the bail application and as per the custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	42	04.04.2020	21/29 of NDPS Act	Majitha
2.	50	06.02.2023	52-a of Prison Act	Goindwal Sahib

3. The facts and allegations are being taken from the status report filed by the concerned Deputy Superintendent of Police, which reads as follows:

"3. That with regard to subject matter of the present petition, it is submitted that the petitioner has tried to conceal the material facts from this Hon'ble Court and has rather made misleading averments in the petition by twisting the facts as per his own suitability.

4. That the true facts pertaining to present case are that on 26.06.2018, the complainant namely Harjit Singh son of Jaimal Singh, resident of Ama Khurd came before the Investigating Officer and got recorded his statement to the effect that "He has been injecting drugs injection alongwith his friends namely Sarwan Singh son of Joginder Singh and Gurjant Singh son of Dalbir Singh, both residents of Ama Khurd since last two years. They have been purchasing intoxicant drugs from Sahib

Singh alias Saba son of Sukha Singh, resident of Jagatpura i.e. the petitioner and his wife namely Babli at a rate of Rs.500/- per nag (portion) and due to strictness, that intoxicant drugs has been obtained in less quantity and whenever, they get these substances after purchasing it, they have been satisfying their urge of drugs. On 24.06.2018, all three persons reached at the house of Sahib Singh alias Saba at 8/9 PM in search of drugs, where Sahib Singh and his wife were present and on asking about availability of drugs, Avtar Singh @ Sahib Singh @ Saba ie. the petitioner and his wife said that the drinking substances are not available but the cheapest and fine drugs to inject an injection has arrived today and after saying from their side, they were given 04 nags (portions) of Rs.200 each and those 04 nags have been given to him by Sahib Singh alias Saba i.e. the petitioner and his wife, after counting Rs.800 which was kept by her and after coming back to their village, they sat down at the edge of the sua (Water channel) outside the village and after preparing one nag, Gurjant Singh injected that injection himself and he fell down at the spot and become unconscious. Thereafter, Sarwan Singh injected with drugs through injection and he also fell down and become unconscious and after recognizing the risk, he injected the injection himself in less quantity and came back to his house in toddler condition and thereafter, in the morning, he came to know that Gurjant Singh has expired and Sarwan Singh has been admitted to the Hospital". In the pursuance of which, the present case, FIR No.74 dated 26.06.2018, under Sections 302, 307, 34 of IPC and 21, 22 of the NDPS Act has been registered at Police Station Jhabal, District Tarn Taran against the petitioner namely Sahib Singh alias Saba as well as co-accused namely Babbli wife of Sahib Singh.

5. That after the registration of present case, the Investigating Officer conducted raids at the house of the petitioner namely Sahib Singh alias Saba and further, as per the order of learned CJM, Tarn Taran, the Police/Investigating team had also conducted search of the house of petitioner in the presence of Sh. Satnam Singh, the then DSP, Sub Division Tarn Taran and during the search of house, 310 grams of Intoxicant powder was recovered from Almirah in the residential house of the petitioner."

4. The petitioner's counsel seeks bail on the grounds of prolonged pretrial custody.

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

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petitioner and his family.

6. The petitioner’s counsel submits that the petitioner would have no objection whatsoever to any stringent conditions that this Court may impose, including that if the petitioner repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, or commits any offence under the NDPS Act, where the quantity involved is more than half of the intermediate, or commercial quantity, or violates S. 19, or 24, or 27-A of the NDPS Act, the State may file an application to revoke this bail before the concerned Special Judge or Sessions Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and may do so at their discretion, to which the petitioner shall have no objection. Counsel for the petitioner further submits that co-accused already granted benefit of bail vide order dated 14.09.2022 passed in CRM-M-29172-2020.

7. The State’s counsel opposes bail and refers to the status report.

REASONING:

8. There are sufficient evidence to connect the petitioner with the crime. However, there is no allegations against the petitioner except he sold the drugs to the deceased and victim, due to consumption of the same, one of them expired and other was hospitalized.

9. As per paragraph 6 of the status report, the name of the contraband is Tramadol Hydrochloride and its weight is 310 grams, and it constitutes an offense under the following provisions and notifications:

Substance Name	Tramadol
Quantity detained	310 Gram
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	124.00%

<i>Drug's Small & Commercial Qty. suggested by Committee report</i>	
Notification No. & date	S.O. 1762 (E) dated 26.04.2018
Punishable U/s	S.22(c) of NDPS Act, 1985

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1762(E)	4/26/2018
Sr. No.	238 ZH	

Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	< 5 Gram
Commercial Quantity	> 250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.O.1761(E) & S.O. 3448(E)	26-Apr-2018 & 26-Jul-2018

Sr. No.	110Y
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

10. 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 set forth by the Legislature under Section 37 of the NDPS Act.

11. The petitioner is entitled to bail because, in somewhat similar cases where the quantity involved was either greater than or close to the amount seized in the current FIR, the Hon'ble Supreme Court has granted bail after prolonged custody, as demonstrated by the following judicial precedent.

12. In *Ajay Khatri v. The State of Rajasthan*, decided on 20-03-2025, SLP (Crl) No. 1228-2025, the 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.

13. 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, Alprasafe 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.

14. As per the custody certificate dated 06.08.2025, the petitioner's custody in this FIR is of 05 years, 02 months and 18 days. Similarly, co-accused of petitioner was enlarged on bail.

15. 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.

16. Following the judicial precedent mentioned above, without commenting on the case's merits, and considering the petitioner's pre-trial custody, the weight of the drugs, coupled with the other factors peculiar to this case, further pre-trial incarceration is not justified at this stage.

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 or 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.

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

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 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 the Hon'ble Supreme Court held 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, the 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. The significant consideration for granting bail is that the Court aims to give the petitioner another chance to course-correct, reform, and reintegrate into the community as an ideal citizen. To ensure that the petitioner also abides by the assurance made on the petitioner's behalf by not repeating the offence or indulging in any crime, it shall be desirable to impose the following additional condition.

25. This bail is conditional, with the foundational condition being that if the petitioner repeats the offense 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, or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, the State shall file an application to revoke this bail before the Special Judge/ Sessions Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and as per their discretion, they may cancel this bail.

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

27. In Amit Rana v. State of Haryana, CRM-18469-2025 [in CRA-D-123-2020, decided on 05.08.2025], a Division Bench of Punjab and Haryana High Court in paragraph 13, holds that "To ensure that every person in judicial custody who has been granted bail or whose sentence has been suspended gets back their liberty without any delay, it is appropriate that whenever the bail order or the orders of suspension of sentence are not immediately sent by the Registry, computer systems, or Public Prosecutor, then in such a situation, to facilitate the immediate restoration of the liberty granted by any Court, the downloaded copies of all such orders, subject to verification, must be accepted by the Court before whom the bail bonds are furnished."

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

**(ANOOP CHITKARA)
JUDGE**

**27.08.2025
Jyoti-II**

Whether speaking/reasoned: Yes
Whether reportable: No.