

232+251 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-2001-2025

Abhey KumarPetitioner

versus

State of Punjab Respondent

2. CRM-M-47098-2025

Ashish Kumar @ Asish KumarPetitioner

versus

State of Punjab Respondent

Date of decision : 29.10.2025

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Pratap Singh Gill, Advocate
for the petitioner in CRM-M-2001-2025.

Mr. Inderpreet Singh Kooner, Advocate
for the petitioner in CRM-M-47098-2025.

Mr. Raj Karan Singh, A.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. By way of this common order, this Court intend to dispose of
abovesaid two petitions as they have arisen out of the same FIR.

2. Petitioners have approached this Court by way of present
petitions praying for granting them regular bail in case FIR No.128 dated
09.09.2024, under Sections 18, 29/61/85 of Narcotic Drugs and

Psychotropic Substances Act, 1985 registered at Police Station Lalru, District SAS Nagar, Mohali.

3. Succinctly, the facts of the present case are that the police party, while on patrolling on 09.09.2024, saw two person coming from Ambala side and both were carrying bags along with them. On seeing the police, they threw their respective bags in the grass. On suspicion, they were apprehended and on asking, they disclosed their names to be Abhay Kumar and Ashish Kumar @ Asish Kumar. They were suspected to be carrying some contraband in the bags being carried by them and thus, search of the same was conducted. On conducting the search of the bags, 1.5 kgs of opium was recovered from each bag and thus, total 03 kgs of opium was recovered from the bags being carried by them. They failed to produce any licence regarding the conscious possession of the same and thus, FIR was registered and they were arrested on the spot. On registration of the FIR, the investigation commenced. Samples taken were sent to the FSL. On receipt of the FSL report, challan was presented and on framing of charges, trial commenced. Petitioner-Abhey Kumar approached the learned Judge, Special Court, SAS Nagar and petitioner-Ashish Kumar approached learned Additional Sessions Judge, SAS Nagar, for grant of bail. However, after hearing both the sides and finding no merit in the same, the trial Court declined their bail applications vide orders dated 30.10.2024 and 11.07.2025, respectively. Hence being aggrieved, petitioners are before this Court praying for the grant of bail by way of filing the present petition.

4. Learned counsels for the petitioners have contended that the petitioners have been falsely implicated in the present case. It is submitted that the alleged recovery was effected from a public place, however, no

independent witness was joined by the investigating agency. It is submitted that there is gross violation of provisions of Section 50 of NDPS Act, in conducting the search. It is submitted that even otherwise the alleged recovery effected from both the petitioners is of 1.5 kgs of opium each, which is a non-commercial quantity. It is submitted that they are being prosecuted for a commercial quantity as the total quantity recovered from both of them would be a commercial quantity. Learned counsel for petitioner-Abhey Kumar has submitted that the petitioner has no criminal antecedents. Learned counsel for petitioner-Ashish Kumar has submitted that though the petitioner is involved in one more case, however, he is on bail in the said case. They, thus, submit that in the overall facts and circumstances, the petitioners deserve to be granted bail.

5. Learned State counsel, on instructions, has opposed the submissions made by the counsels for the petitioners and submits that both the petitioners were arrested together and the total weight of the contraband i.e. opium recovered is 03 kgs. He submits that the alleged recovery effected is 3 kgs of opium which is a commercial quantity and thus, provisions of Section 37 of NDPS Act, are attracted in the present case. He has produced the custody certificates of the petitioners in the Court. He, on instructions, has submitted that out of total 12 prosecution witnesses, none has been examined till date.

6. On hearing counsel for the parties and perusing the record, it is deciphered that respective recovery from each of the petitioners is 1.5 kgs of opium, and thus total recovery effected is 03 kgs of opium. As per custody certificate, petitioners have suffered an incarceration of 01 year, 01 month and 16 days as on 28.10.2025. It further reflects that petitioner-Abhey Kumar has no criminal antecedents. Though petitioner-Ashish Kumar is

involved in one more case, however, he is on bail in the said case.

7. In view of the facts and circumstances of the present case, this Court cannot ignore the fact that the speedy trial is the fundamental right of every accused. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260**, this Court is of the opinion that the case of the petitioner is covered by the ratio of law laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. xxxxx

21.it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

22. xxxxx

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest

economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

8. The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court.

9. This Court would refrain itself from commenting anything on the merits of the case. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioners succeed in making out a case for grant of regular bail. Accordingly, both the petitions are allowed. Petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned Trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

29.10.2025
ps-I

(**RAJESH BHARDWAJ**)
JUDGE

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