



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

CRM-M-3054-2025 (O&M)

Date of decision: 17.03.2025

Joga Masih

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Ms. Swati Verma, Advocate for the petitioner.

Ms. Manjot Kaur, AAG, Punjab for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short* 'BNSS') for grant of bail pending trial to the petitioner in FIR No.76 dated 26.11.2024 (P-1), under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short* 'NDPS Act') [Sections 27-A & 29 of the NDPS Act added later on], registered at Police Station Qadian, Police District Batala, District Gurdaspur.

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(2) Short reply by way of an affidavit dated 16.03.2025 of Sh. Harkrishan Singh, Deputy Superintendent of Police, Sub Division Sri Hargobindpur, Police District Batala on behalf of the respondent has been filed and which is taken on record. Copy thereof supplied to the opposite side. Registry to tag the affidavit at appropriate place.

(3) Allegations are that 5 grams of *Heroin* (small quantity) and drug money of ₹ 2000/- were recovered from co-accused Pardeep Kumar; whereas 7 grams of *Heroin* (non-commercial) was recovered from another co-accused Avtar Singh. Aforesaid co-accused Pardeep Kumar suffered disclosure to the effect that said contraband was sold by petitioner to other co-accused.

(4) Contends that small quantity of contraband i.e. 5 grams of *Heroin* was allegedly recovered from co-accused Pardeep Kumar and recovery alleged from another co-accused Avtar Singh is only 7 grams of *Heroin* (non-commercial quantity). Further contends that petitioner was neither named in the FIR; nor any contraband was recovered from him. Also contends that petitioner was arrested in the present case on 08.12.2024 and after remaining in custody for one and a half month, was granted interim bail by this Court on 24.01.2025. Again contends that in pursuance of the aforesaid order, he is regularly appearing before learned Special Court. Still further contends that petitioner has never misused the interim concession; nor there is allegation that he is likely to misuse the concession or hamper the proceedings in any manner. Lastly contends that investigation is almost over and report under Section 173 Cr.P.C. is likely to be presented shortly.

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(5) *Per contra*, learned State Counsel, on instructions from quarter concerned, has fairly acknowledged the above factual position and submits that petitioner is regularly appearing before learned Special Court. Also acknowledged that petitioner has not misused the concession of interim bail granted by this Court on 24.01.2025; investigation is almost complete and report under Section 173 Cr.P.C. is likely to be presented before the Court of competent jurisdiction within one week from today. However, she opposed the prayer on the premise that petitioner was supplier of the contraband, recovered from co-accused, which was even sold further by them; drug money of ₹ 2000/- was recovered from co-accused Pardeep Kumar and as such, offence under Section 27-A of the NDPS Act was invoked in this case; thus, bar under Section 37 of the NDPS Act would apply.

(6) Heard learned Counsel for the parties and perused the paper-book.

(7) This Court, on 24.01.2025, granted interim bail to the petitioner in following manner:-

“Contends that petitioner was neither named in the FIR, nor any contraband has been recovered; rather has been nominated on the basis of disclosure of co-accused Pardeep Kumar, who has already been granted bail pending trial by Co-ordinate Bench of this Court on 15.01.2025 (P-2).

Learned State counsel seeks time to have instructions in the matter.

Posted for 17.03.2025.

In the meanwhile, petitioner be released on interim bail in the present case, till the next date of hearing, on furnishing

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adequate bail and surety bonds subject to the satisfaction of learned trial Court/CJM/Duty Magistrate concerned.”

(8) Although drug money of ₹ 2000/- was allegedly recovered from co-accused Pardeep Kumar and offence under Section 27-A of the NDPS Act has been added by the police in the present case; but concededly, no contraband was recovered from the petitioner. Therefore, it would be debatable during trial as to whether petitioner was in any way connected with the recovery of alleged contraband (non-commercial quantity) and/or drug money.

(9) Be that as it may, at this stage, it is very difficult to comprehend that petitioner was in conscious possession of the alleged contraband and/or drug money.

(10) Thus, in such a scenario, there is no hesitation to record the “Twin Test” satisfaction in favour of the petitioner as per Section 37(1)(ii) of the NDPS Act in the following manner:-

(i) *Prima facie*, there is no material to indicate that petitioner was found in conscious possession of the alleged contraband and/or drug money; hence, being a debatable question, shall be decided during trial and as such, it is very difficult to say that petitioner is guilty of the alleged offence;

(ii) After registration of the FIR in question, petitioner has not been involved in any case under the NDPS Act.

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(11) Needless to say that above “Twin Test” satisfaction has been recorded only for the purpose of bail application and same be not treated as an opinion on pending trial.

(12) It is also not in dispute that petitioner remained in custody for about 1 ½ month and after completion of investigation, report under Section 173 Cr.P.C. is likely to be presented shortly; thus conclusion of trial is likely to take sufficient long time.

(13) Learned State Counsel has duly acknowledged that petitioner is regularly appearing before learned Special Court and there is no allegation that in case interim bail is made absolute, he is likely to misuse the concession or hamper the proceedings in any manner. As a result thereof, sending the petitioner to custody at this stage would not serve any purpose.

(14) Consequently, present petition is allowed. Interim bail granted to the petitioner, vide order dated 24.01.2025, is made absolute. He shall be admitted to bail on furnishing bail/surety bonds to the satisfaction of learned Special Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(15) Petitioner shall appear on each & every date of hearing and to fully co-operate with learned Special Court without seeking any unnecessary adjournment(s).

(16) The above observations be not construed as an expression of opinion on the merits of the case.

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(17) It is clarified that in case there is any misuse of concession of bail on the part of petitioner, State would be at liberty to move an appropriate application for recalling of this order.

(18) Disposed off accordingly.

Pending application(s), if any, shall also stand disposed off.

17th March, 2025

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>