



In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-6741 of 2025

Reserved On: 04.09.2025
Pronounced On: 08.09.2025

Deepak Kumar alias Kochar

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner(s).

Mr. Rohit Bansal, Senior Deputy Advocate General,
Punjab, for the respondent.

Surya Partap Singh, J.

1. This is first petition filed by the petitioner, under Section 483 of BNSS, for grant of bail. The petitioner, who is in custody with regard to commission of offence punishable under Sections 21-C of the NDPS Act, Police Station Jhabal, District Tarn Taran, is craving the benefit of bail.
2. Briefly stating the facts emerging from record are that the above mentioned FIR came into being in view of chance recovery of contraband from the possession of petitioner.
3. According to prosecution, on 09.12.2023, a police party headed by SI Tarsem Singh was checking vehicles on a check point. As per prosecution, they spotted a car, the driver of which when noticed a police party on his way ahead tried to flee. It has been alleged by the prosecution that in view of suspicion, the above said car was intercepted by the police

party and on checking it was found that the name of driver of above mentioned car was Deepak Kumar i.e. the petitioner, who was carrying 5 kgs. 20 grams of heroin.

4. According to prosecution, on recovery of above mentioned contraband, requisite formalities with regard to seizure and search of person of the accused and his arrest were undertaken and the FIR was lodged which led to investigation of the case.

5. Heard.

6. It has been contended by learned counsel for the petitioner that the petitioner has been falsely framed in the present case and that he is innocent. According to learned counsel for the petitioner, the petitioner has already suffered sufficient incarceration for being in custody for a period of one year eight months and 15 days. It has also been contended by learned counsel for the petitioner that nothing is left to be recovered from the possession of the accused and that trial is not likely to be concluded in near future.

7. In addition to above, while referring to the statement of PW.2-,the Investigating Officer of this case, the learned counsel for the petitioner has pointed out that the Investigating Officer himself has admitted, during the course of cross-examination, that neither he had sent any intimation in writing as prescribed under Section 42(2) of the NDPS Act, nor he sent a report to his senior officer in compliance of Section 57 of the NDPS Act. According to learned counsel for the petitioner, once the necessary compliance of above mentioned mandatory provision has not been made, there are very fair chances of failure of prosecution. As per learned

counsel for the petitioner, in the given fact situation, the petitioner is entitled for the benefit of bail.

8. It has also been argued by learned counsel for the petitioner that there is significant time gap in the date of receipt of information in the police station and the registration of FIR. It has been further contended, by learned counsel for the petitioner, that as per the prosecution story, all the memos were prepared on the spot, but the record shows that the number of FIR was mentioned on all the memos despite the fact that the FIR was lodged subsequently. According to learned counsel for the petitioner, the above mentioned action on the part of the Investigating Agency vitiates the investigation. In this regard reliance has been placed by learned counsel for the petitioner upon the observations made by this Court in the case of *Baljit Singh alias Billu v. State of Punjab 2019(3) RCR (Criminal) 779*.

9. In addition to above, reliance has been placed upon the observations made by this Court in the case of *Ajay Malik v. State of U.T. Chandigarh, 2009(3) RCR (Criminal) 649*, wherein it has been held that when before registration of the FIR, the documents which were prepared at the spot, bear the FIR number and there is no explanation by the Investigating Officer, it raises a strong suspicion about the veracity of these documents.

10. Similar view has been taken this Court in the case of *Jagjeet Singh alias Jaggi v. State of Punjab 2022(1) Law Herald 87*.

11. In this regard, the observations made by the Hon'ble Supreme Court of India in the case of *Junaid Alam v. State of Uttarakhand (Special Leave to Appeal (Criminal) No. 7708 of 2024, decided on 12.08.2024)* are

relevant.

12. Per contra, the learned State counsel has argued that the quantity of contraband recovered in the instant case is commercial quantity and therefore, rigors of Section 37 of the NDPS Act are involved. According to learned State counsel, the direct allegations with regard to dealing with contraband are there against the petitioner, and that in view of her role in the commission of offence, viz-a-viz quantity of contraband, the petitioner is not entitled to the benefit of bail.

13. The record has been perused carefully.

14. A careful perusal of record shows that in the present case, there are several relevant factors which are required to be taken into consideration before arriving at any decision with regard to instant bail petition:-

- i) that the petitioner has already suffered sufficient incarceration for being in custody for a period of one year eight months and 15 days;
- ii) that nothing is left to be recovered from the possession of accused;
- iii) that the trial is not likely to be concluded in near future.
- iv) that the detention of petitioner behind the bars is not likely to serve any purpose; and
- v) that the testimony of the Investigating Officer shows that he failed to comply with the mandatory provisions enshrined under Sections 42(2) and 57 of the NDPS Act. In this regard, the observations made by this Court in the case of *Thandi Ram v. State of Haryana 1999(2) RCR (Criminal) 857* and by the Hon'ble Supreme Court of India in the case of *State of Rajasthan v. Shanti 2010 (1) RCR (Criminal) 112* are relevant.

15. If the cumulative effect of all the aforesaid factors is taken into

consideration, it transpires that there are chances of failure of prosecution on account of non-compliance of mandatory provisions. Otherwise also, once the detention of petitioner is not likely to serve any purpose and there is nothing on record to show that if released on bail, the petitioner will indulge in similar activity, the petitioner is entitled for the benefit of bail.

16. In view of above, it is hereby held that the present petition deserves to be allowed. Hence, the same is hereby allowed and the petitioner is admitted to bail subject to his furnishing bail bonds to the satisfaction of the learned trial Court. In case, the learned trial Court concerned is not available, on the date of furnishing bail bonds, the learned Sessions Judge shall be at liberty to assign the above case, for the above-mentioned purpose, to any other Court.

17. It is, however, made clear that any observation made here-in-above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

(Surya Partap Singh)
Judge

September 8, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No