



CRM-M-12967-2025 (O&amp;M)

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

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**CRM-M-12967-2025 (O&M)****Reserved on : 21.08.2025****Pronounced on : 25.08.2025**

Markas Masih

..... Petitioner

VERSUS

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH**

Present: Mr. N.S. Sodhi, Advocate for the petitioner.

Mr. Rohit Bansal, Sr. DAG Punjab.

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**SURYA PARTAP SINGH, J.**

1. This is a first petition filed by the petitioner under Section 439 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC'), seeking regular bail in a case arising out of FIR No.168 dated 04.12.2024 under Sections 21(c), 29 and 25 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'NDPS') read with Section 10/11/12 of Aircraft Act, 1934, Police Station Dera Baba Nanak, Batala.

2. The petitioner, who is being prosecuted for the commission of offence punishable under the aforesaid Sections, is seeking regular bail. The application for bail filed by the petitioner before the Court of learned Additional Sessions Judge, Gurdaspur has been dismissed vide order dated 16.01.2025.



3. The facts projected by the prosecution in the instant case are, that the FIR of this case came into being on 04.12.2024. As per prosecution on that day, a police party headed by Inspector/SHO Amarjeet Masih along with his team was on law and order duty in the official vehicle near Village 'Thathere Ke'. There a BSF party headed by Deputy Commission (G) Prashant Chauhan met him. When both the teams were jointly checking, an informer gave a tip-off to Inspector/SHO Amarjeet Masih and DC Prashant Chauhan that Mikal Masih S/o Yakub Masih had taken the pig farm of Prabhjot Singh S/o Behal Singh on rent, and that in last night, 4-5 boys had visited the abovesaid place and they had received heroin smuggled by someone from Pakistan through a drone. According to abovementioned tip-off, the petitioner was helping them in the abovementioned smuggling and if raid is conducted, huge quantity of contraband may be recovered.

4. It has been further alleged by the prosecution that in view of abovementioned tip-off, when the raid was conducted at the place disclosed by the informer, on the spot two young persons were seen, who on spotted the police party tried to flee, but they were intercepted and on interrogation, by the police party, they disclosed themselves to be Markas Masih S/o Keemti Masih and Mikal Masih S/o Yakub Masih (petitioner herein). The prosecution has further alleged that when search of the abovementioned premises was conducted from a temporary room, a black colour bag lying underneath the bed was recovered. As per prosecution, when the contents of abovementioned bag were checked, it was found that 4 kg 20 gms heroin was kept in the same. It is the case of the prosecution that on recovery necessary formalities with regard to seizure, sample and preparation of



memo etc. were performed by the police party. Thereafter, the petitioner was arrested and on completion of investigation, challan has been filed in the Court.

5. Heard.

6. It has been argued by learned counsel for the petitioner that the petitioner is innocent, who has been falsely implicated in the present case merely on the basis of the statement of co-accused. As per learned counsel for the petitioner, the statement of co-accused was recorded by the police when the co-accused was in custody and therefore, such statement is inadmissible evidence. According to the learned counsel for the petitioner, although the petitioner is owner of the premises from where alleged recovery had taken place, yet the petitioner cannot be held responsible for any kind of recovery of contraband because the abovesaid premises was leased-out by the petitioner and he was not occupying the same. The learned counsel for the petitioner has further contended that otherwise also number of lapses have been committed by the investigating agency during the course of investigation, as despite information in advance, there was no compliance of Section 42 of NDPS Act, secondly, the samples were not taken and sealed in the presence of Magistrate and thirdly, the raid was conducted after the sunset in violation of laid down procedure. It has also been argued by learned counsel for the petitioner that the petitioner has clean antecedents and he has already suffered incarceration for a period of 8 months and 11 days. According to learned counsel for the petitioner in view of above facts and circumstances, the petitioner is entitled for the benefit of bail.



7. The learned State Counsel has controverted the abovementioned arguments and contended that recovery in the instant case is a huge recovery, i.e. 4 kg 20 gm of heroin, against the minimum prescribed limit of commercial quantity of 250 gm. According to the learned State Counsel, there is no dispute qua the fact that the premises from where recovery was effected is owned by the petitioner and that there are specific allegations that half of the portion of the premises, from where contraband was recovered, belongs to the petitioner. As per learned State Counsel otherwise also evidence has been collected by the investigating agency with regard to the fact that the petitioner was actively involved in the illegal activities pertaining to the instant case and that such evidence is yet to be appreciated by the learned trial Court. According to learned State Counsel, in the instant case, the petitioner is not entitled for any benefit of bail.

8. The record has been perused carefully.

9. In the present case, at the very outset, it is relevant to mention that 250 gm is the threshold for commercial quantity and the recovery in the present case is almost 20 times of the minimum quantity. As such, the recovered contraband comes within the category of commercial quantity. Secondly this fact cannot be ignored that rigors of Section 37 of the NDPS Act are attracted in the present case and unless the conditions enshrined under the aforesaid Section are complied with, the benefit of bail cannot be afforded to the petitioner. As far as the defects in the investigation, as pointed out by learned counsel for the petitioner, are concerned, the same can be appreciated during the course of trial only. At this stage, there is nothing on record which can lead to a conclusion that the petitioner is not



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guilty for the commission of offence alleged by the prosecution or that he will not indulge in similar activity in near future.

10. If the cumulative effect of all the abovementioned factors, involved in the instant case, is taken into consideration, in my opinion, the petitioner is not entitled for the benefit of bail.

11. In view of above, finding no merit in the present petition the same is hereby dismissed.

(SURYA PARTAP SINGH)  
JUDGE

AUGUST 25, 2025  
*Gaurav Thakur*

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|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether Reportable          | Yes/No |