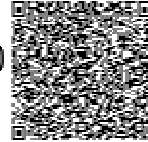


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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

351

CRM-M-15238-2025 (O&M)

Date of decision: 12.05.2025

Sandeep Kumar**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Ruhani Chadha, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant one is the fourth petition that has been filed by the petitioner under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No. 184 dated 20.09.2022, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short* 'NDPS Act') at Police Station Mahilpur, District Hoshiarpur. The previous petitions have been dismissed as withdrawn.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 20.09.2022, the petitioner and co-accused Bikram Singh @ Romy, Ravinder Kaur, Parminder Kaur @ Renu and Maninder Kaur, while coming in a car bearing registration number CH-01-AY-0023, were apprehended by a police party headed by SI Jaswant Singh and recovery of 255 grams of heroin was effected from the dashboard of the said car. All of the accused persons were formally arrested at the spot. After completion of necessary investigation and usual formalities, *challan* under Section 173 of

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Cr.P.C. was presented on 14.03.2023 in the Court and presently, the petitioner along with the co-accused is facing trial for commission of aforesaid mentioned offence.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. In fact, co-accused Maninder Kaur is the wife of the present petitioner and other co-accused are family members of the petitioner. They, being family members, were travelling together in the aforesaid car. All of them have been falsely implicated in this case by planting the aforesaid contraband in the car. The factum of false implication of the petitioner can be ascertained from the fact that he was falsely implicated in two more cases of similar nature, in which, he stands acquitted by the trial Court. Even otherwise, the quantity of the alleged contraband is marginally higher than the commercial quantity. It is further argued that a perusal of the copies of the zimni orders passed by the learned trial Court, which have been placed on record, would show that the trial is substantially delayed as only two witnesses have been examined so far. Now, an application under Section 311 of Cr.P.C. has been filed, which is pending. Even investigation qua co-accused Jasvir Kaur @ Fojan is being conducted and on completion of the same, supplementary *challan* shall be submitted. All this goes to show that conclusion of trial would take considerable long time. The petitioner is in custody since 20.09.2022 i.e. for the last more than 02 years and 07 months. In view of substantial delay in trial, the petitioner is entitled to get benefit of bail. No useful purpose would be served by keeping the petitioner in custody anymore. It is, therefore, urged that the petition deserves to be allowed.

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4. Status report has been filed by the respondent-State. It is submitted therein and learned Assistant Advocate General, Punjab has argued that the petitioner is not entitled to get benefit of bail as he along with the co-accused was nabbed at the spot and recovery of 255 grams of heroin was effected from the car, in which they were travelling. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

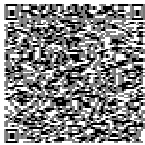
6. As per the allegations, the petitioner and above named four co-accused, one out of whom, namely Maninder Kaur, is stated to be the wife of the present petitioner, were apprehended by the police party and recovery of 255 grams of heroin was effected from their car. The quantity of the alleged contraband is marginally higher than commercial quantity, the same being 250 grams. A perusal of the petition reveals that the petitioner was implicated in two more cases of similar nature but he has been acquitted in those cases. The plea of the petitioner is that he was travelling in the said car along with his family and by planting a false recovery, the entire family has been roped in. Be that as it may, a perusal of the zimni orders passed by the learned trial Court, copies of which have been placed on record, shows that only two prosecution witnesses have been examined so far, despite the fact that *challan* was presented way back on 14.03.2023. The trial is obviously delayed and there is no likelihood of the same to conclude in near future as an application filed under Section 311 of Cr.P.C. is pending. More so, investigation qua co-accused Jasvir Kaur @ Fojan is being conducted and supplementary *challan* is to be presented after completion of investigation. The petitioner is

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in long incarceration of more than 02 years and 07 months. Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha : 2023 Live Law (SC) 533*** has held that 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 Act. Similar view has been taken by Hon'ble Supreme Court in ***Ankur Chaudhary vs. State of Madhya Pradesh : 2024 (4) RCR (Criminal) 172***. Reliance can also be placed upon ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi) : 2023 AIR(SC) 1648*** ***2023 AIR(SC) 1648***, wherein Hon'ble Supreme Court, while granting concession of regular bail to an accused, from whom commercial quantity of the contraband was allegedly recovered, has held that grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act. Reference can also be made to the authority cited as ***Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022(10) SCC 51***, wherein similar observations were made by the Hon'ble Supreme Court. Reliance can also be placed upon the authority cited as ***Bhupender Singh vs. Narcotic Control Bureau : (2022) 2 RCR (Criminal) 706***, wherein a Division Bench of this Court, after considering issue with respect to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and the rigors enumerated under Section 37 of the NDPS Act, has held that convict/accused is not precluded from claiming bail invoking parameters of Article 21 of the Constitution of India *de-hors* the stringent provisions of Section 37 of the NDPS Act. In the present case, apparently and evidently, the trial is substantially delayed. Therefore, keeping

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in view the aforementioned facts and circumstances and also the ratio of law as laid down in the aforecited authorities, this Court is of the considered opinion that no useful purpose would be served by keeping the petitioner in custody anymore. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned. However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found involved in any other subsequent case.

8. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

12.05.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

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