



CRM-M-25196 of 2025

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

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CRM-M-25196 of 2025
Date of Decision: 02.09.2025

Shubham Tiwari @ Sunny

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present: Mr. Parth Aneja, Advocate for the petitioner.

Mr. Mohit Chaudhary, AAG, Haryana.

RUPINDERJIT CHAHAL, J (ORAL)

1. Prayer in the instant petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is for grant of regular bail to the petitioner in case FIR No.178 dated 20.04.2024 registered under Sections 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 201 of IPC, at Police Station Sadar Yamuna Nagar, District Yamuna Nagar.

2. Brief facts of the present case are that as per the prosecution, on 20.04.2024, ASI Rishipal, along with his fellow police officials was on patrolling duty and after receiving a secret information, apprehended two persons, namely, Yogesh Kumar @ Macchhar and Rashid, who were found in conscious possession of 330 grams of heroin and 90 grams of heroin respectively.

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3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and he has no concern with the said offence. He argued that neither the petitioner was present at the spot nor any recovery is to be effected from him. The petitioner was nominated as an accused on the basis of disclosure statement made by co-accused Yogesh Kumar @ Macchhar and Rashid. Apart from the disclosure statement, there is no other evidence to connect the petitioner with the offence in question and it is a trite law that disclosure statement of co-accused during his custodial interrogation is not admissible. The petitioner is in custody since 21.01.2025. The investigation in the case is complete and challan also stands presented. He further submits that the trial will take a long time to conclude and no useful purpose would be served by keeping him behind the bars. Further, co-accused Rashid, from whom the recovery of alleged contraband had been effected, has already been granted the concession of regular bail by the Court of learned Additional Sessions Judge, Yamuna Nagar, vide order dated 24.06.2024. Therefore, it is urged that the petition deserves to be allowed.

4. Notice of motion.

5. Learned State counsel, who has appeared on advance notice of the petition, has filed the custody certificate of the petitioner, which is taken on record. He has vehemently opposed the prayer for bail by submitting that the offence committed by the petitioner is serious in nature. He has further submitted that the petitioner is also involved in multiple other cases meaning thereby he is an habitual offender.



6. Having heard learned counsel for the parties at length and after perusing the record of the case, it is evident that the petitioner is in custody for the last more than 07 months, investigation is complete; challan stands presented and the trial may take a long time to conclude, no useful purpose would be served by detaining him in further custody. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future would be violative of his rights under Article 21 of the Constitution of India.

7. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as '***Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592***', relevant whereof reads as under:

"155. We answer the reference by stating: (i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act (ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS ACT".

8. More recently, the Hon'ble Supreme Court in a judgment titled as '***Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu Vs. State of Gujrat, Narcotics Control Bureau' 2024 INSC 290***', has reiterated the ratio decidendi of the judgment of Hon'ble Supreme Court in the case of Tofan Singh (supra).



9. The Hon'ble Supreme Court while dealing with a plea for grant of anticipatory bail in a case under NDPS Act, 1985; in a judgment titled as ***'Vijay Singh vs. The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s)1266/2023 decided on 17.05.2023'*** has held as under:

"The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act". His application for anticipatory bail was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail. Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose. The petition is allowed. All pending applications are disposed of."

10. The petitioner is sought to be arrayed solely on the basis of disclosure statement of the co-accused. Suffice to say there is no other material available to connect the petitioner with the recovered contraband. The veracity of the disclosure statement made by the co-accused will be subject to comprehensive scrutiny during the course of the trial and same cannot be a ground to decline the concession of regular bail to the petitioner.

11. As regards the submission of learned State counsel that petitioner is involved in other/one more criminal case(s), reference is placed upon the judgment of the Hon'ble Supreme Court in ***Maulana Mohd. Amir***



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Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382 in which, it is held that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other/another case(s). The relevant portion of the said judgment is reproduced herein-below:-

"As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

12. In view of the above, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned. It is clarified that nothing stated herein shall be construed as an expression of opinion on the merits of the case.

(RUPINDERJIT CHAHAL)
JUDGE

02.09.2025*D.Bansal*

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