



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

Date of decision: 08.07.2025

1. CRM-M-26075-2025

Kanwarpal Singh
State of Punjab

Versus

....Petitioner
....Respondent

2. CRM-M-28160-2025

Johny @ Bhaiya
State of Punjab

Versus

....Petitioner
....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Arora, Advocate
for the petitioner in CRM-M-26075-2025.

Mr. B.D. Sharma, Advocate
for the petitioner in CRM-M-28160-2025.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Vide this common order, I intend to dispose of CRM-M Nos.26075 and 28160 of 2025, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CRM-M-26075-2025.
2. Prayer in both these petitions filed under Section 483 of BNSS, 2023 is for grant of regular bail to the petitioner(s) namely Kanwarpal Singh and Johny @ Bhaiya in FIR No.51 dated 07.03.2025



registered under Sections 21, 29 of the NDPS Act (Section 27-A of the NDPS Act added later on) at Police Station Basti Bawa Khel, District Jalandhar.

3. As per the allegations in the FIR, on 07.03.2025 at about 12:10 AM, ASI along with a police team was on patrol duty near the Leather Complex Road, Jalandhar, when they stopped a suspicious white Scorpio vehicle bearing registration No.PB-08-DQ-7865 with five occupants namely Shivas, Johny alias Bhaiya, Kanwarpal Singh, Sunil Singh, and Pankaj Joshi. Upon informing them of suspicion regarding possession of narcotics, the vehicle was searched in the presence of the police team and from the glove box of the vehicle, a heavy polythene envelope and a computerized weighing scale were recovered. The envelope contained a transparent packet of white substance which was identified as heroin, weighing 100 grams. The heroin and weighing scale were sealed and taken into possession, and the vehicle was also seized. Thereafter, the impugned FIR was registered.

4. Learned counsel for the petitioner(s), *inter alia*, contends that there is no evidence to prove the conscious possession of the petitioner(s) over the alleged recovery of contraband. Admittedly, heroin was recovered from the glove box of the vehicle and the petitioner(s) are neither the driver nor the owner of the vehicle, in question. Further, the quantity involved in the FIR (*supra*) is non-commercial in nature as such the embargo created under Section 37 of the NDPS Act, would not



apply. Both the petitioners have suffered the incarceration of almost 04 months and the investigation has been completed.

5. Learned counsel for the petitioner(s) further submits that there are total 15 prosecution witnesses cited in the list of witnesses, out of which, no PW has been examined till date and the trial is likely to take long time in conclusion.

6. *Per contra*, learned State counsel has filed custody certificates today in the Court which are taken on record and he opposes the prayer made by learned counsel for the petitioner(s) on the ground that the petitioner(s) were travelling in the same vehicle, from which heroin was recovered and it was obligated upon the petitioner(s) to explain the presence of the contraband in the vehicle, in which they were travelling. Further the petitioner – Johny @ Bhaiya, is involved in two more cases, registered under the NDPS Act, however, he could not controvert the fact that both the petitioners are in custody from the last about 04 months.

7. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner(s) are behind the bars from the last 03 months and 28 days. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 15 prosecution witnesses, no PW has been examined so far.



8. A two Judge Bench of Hon'ble Supreme Court in ***"Satender Kumar Antil vs. CBI"***, (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

9. Further the culpability, if any, would be determined at the time of trial and as such, no useful purpose will be served by further detention of the petitioner(s)-accused. Keeping the petitioner(s) in further detention without the prospect of the trial being concluded in the near future, would be violative of their rights under Article 21 of the Constitution of India.

10. Further keeping in view the law laid down by the Hon'ble Supreme Court of India in ***"Prabhakar Tewari vs. State of U.P. and***



another” 2020 (1) R.C.R. (Criminal 831) and “*Maulana Mohd. Amir Rashadi vs. State of U.P. and another*”, 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

11. In view the discussion above, the present petitions are allowed. Accordingly, without commenting upon the merits of the case, the petitioner(s) namely Kanwarpal Singh and Johny @ Bhaiya are ordered to be released on regular bail during pendency of the trial, on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/trial Court/Duty Magistrate.

12. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

13. A photocopy of this order be placed on the file of other connected case.

(HARPREET SINGH BRAR)
JUDGE

08.07.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No