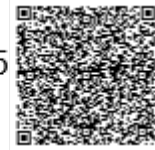


IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2025:PHHC:149715



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CRM-M-36771-2025 (O&M)
Date of decision:31.10.2025

Afzal Khan @ Mohd Afjal

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

...

Manisha Batra, J. (Oral).

1. The petitioner is seeking indulgence of this Court for grant of regular bail in case arising out of FIR No.85 dated 15.03.2023, registered under Sections 18, 25, 29 and 31 of the NDPS Act, at Police Station Zirakpur, District SAS Nagar, Mohali, on the allegations that on 15.03.2023, a secret information was received to the effect that petitioner along with co-accused Rajinder Kumar was involved in the business of sale of opium in the area of Zirakppur, Chandigarh, Mohali and Ambala and could be apprehended with huge quantity of contraband on the same day as he was present at a particular place with the same. Believing the secret information to be true, a raiding party was formed, which raided the informed place and apprehended the petitioner along with co-accused Rajinder Kumar in a car bearing registration No.CH-01-CE-2240. On conducting search, 3 kgs of

opium was recovered from the car whereas 2 kgs of opium and drug money of Rs.11 lakhs had recovered from his house in pursuance of his disclosure statement. Co-accused Rajinder Kumar got recovered 2 kgs of opium and drug money of Rs.6 lakhs. The petitioner along with co-accused is now facing trial for commission of aforementioned offences. His previous petition had been dismissed as withdrawn vide order dated 04.04.2025.

2. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. A false recovery has been planted upon him. He is in custody since 15.03.2025. Trial will take considerable time to conclude as only 04 out of 17 witnesses have been examined so far. He is ready to abide the terms and conditions to be imposed upon him and with these broad submissions, it is urged that he deserves to be extended benefit of bail.

3. Per contra, learned State counsel has vehemently opposed the grant of any relief to the petitioner by submitting that there are serious and specific allegations against him. The recovered contraband is of commercial quantity. No fresh ground has been pleaded so as to merit interference by this Court while considering the prayer for grant of bail. Therefore, it is urged that the petition does not deserve to be allowed.

4. This Court has heard learned counsel for the parties at considerable length.

5. It is well-settled law that the Court, while considering an application for grant of bail, has to keep certain factors in mind such as whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence, circumstances which are peculiar to the

accused, likelihood of the offence being repeated, the nature and gravity of the accusation, severity of the punishment in the event of conviction, the danger of the accused absconding or fleeing if released on bail, and reasonable apprehension of the witnesses being threatened, etc. However, at the same time, the period of incarceration is also a relevant factor to be considered while deciding whether bail should be granted to an accused charged with an offence under the provisions of the NDPS Act. The twin conditions under Section 37 of the NDPS Act are to be satisfied. The rigors of Section 37 of the NDPS Act are attracted in this case as the accusations pertain to the recovery of commercial quantity of contraband from the petitioner as well as from the co-accused. However, so far as the maintainability of the petition is concerned, it may be mentioned that an accused has a right to make successive applications for grant of bail, and it is the duty of the Court, while entertaining such a subsequent bail application, to consider the reasons and grounds on which the earlier bail petition was rejected. The fresh grounds which persuade the Court to take a view different from the one taken in the earlier application are also required to be recorded. Reference in this regard can be made to ***Prasad Shrikant Purohit v. State of Maharashtra (2018) 11 SCC 458***, wherein it was so observed.

6. In the instant case, contraband of commercial quantity was recovered from him. The petitioner has remained in custody for a period of 02 years, 07 months and 09 days. This factor, in the opinion of this Court, is a ground to move for bail afresh. The Hon'ble Apex Court has observed in a catena of cases that an accused cannot be kept in custody for an indefinite period of time, and the bail application can be considered on its own merits

even if it is filed repeatedly. It has also been held that every day spent in custody can provide a new cause of action for filing a bail application under certain circumstances. This principle is a part of the broader approach emphasizing that law prefers bail over jail, aiming to balance the rights of the accused with the requirements of the criminal justice system. Prolonged detention itself is a ground for reconsideration of bail since the settled principle of law is that detention prior to trial should not become punitive. Only 04 out of 17 witnesses have been examined by the prosecution till now. Obviously, the petitioner is not required for further investigation. It is true that grant of bail on account of delay in trial and long period of incarceration is to be considered in light of Section 37 of the NDPS Act. Reliance in this regard can be placed on the observations made by the Hon'ble Apex Court in ***Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352***, wherein it was held that grant of bail on account of undue delay in trial cannot be said to be fettered under Section 37 of the NDPS Act, given the imperative of Section 436A which is applicable to offences under the Act. It was also observed that the jails are overcrowded and their living conditions are, more often than not, appalling. The danger of unjustified imprisonment is that inmates are more likely to be hardened rather than reformed. Reliance can also be placed upon ***Manmandal and Another v. State of West Bengal, Special Leave Petition (Criminal) No. 8656 of 2023 decided on 14.09.2023*** and ***Rabdi Prakash v. State of Odisha, 2023 SCC OnLine SC 110***, wherein bail was granted to the accused, who had been incarcerated for a period of almost two to three years and the trial was likely to take considerable time. By observing that prolonged incarceration

generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution, and in such a situation, the constitutional principle must override the statutory embargo contained under Section 37 of the NDPS Act.

7. In view of the above discussion, this Court is of the opinion that a case is made out for grant of bail to the petitioner at this stage. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail on her furnishing personal as well as surety bonds to the satisfaction of the learned trial Court, and subject to the condition that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case. He shall appear before the learned trial Court on each and every date of hearing except when his presence has been exempted by the trial Court. He shall surrender his passport, if any, furnish details of his cell phone and Aadhaar card, and shall not change his mobile number(s) during the pendency of the trial.

8. It is clarified that the observations made above shall not be construed as an expression of opinion of this Court on the merits of the case and shall not influence the outcome of the trial in any manner.

9. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

(MANISHA BATRA)
JUDGE

31.10.2025

harjeet

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