



216 (2nd case)

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

CRM-M-48018-2023 (O&M)

Date of decision : 10.03.2025

Sarabjit Singh @ Rinku

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Daman Jeet Bhoriwal, Advocate, for the petitioner.

Ms. Manjot Kaur, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), for grant of bail pending trial to the petitioner in FIR No.106 dated 11.09.2022, under Section 21 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of NDPS Act added later on), registered at Police Station Lakho Ke Behram, District Ferozepur Punjab.

2. Allegations are that petitioner was arrested on disclosure made by co-accused, namely, Angrej Singh, who had allegedly been found in possession of 300 Grams of heroin.

3. Contends that petitioner remained in custody from 16.02.2023 till 12.12.2023; after investigation, report under Section



173 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was submitted on 06.03.2023; charges were framed on 16.03.2023; out of total 15 prosecution witnesses, only one remains to be examined and petitioner is regularly appearing before learned Special Court. Further contends, trial is likely to take sufficient long time to conclude.

3.1 Again contends that there is no apprehension that petitioner is likely to influence the prosecution witnesses or hamper the trial, in any manner.

3.2 Lastly contended that no recovery of alleged contraband was effected from the petitioner; rather nominated on disclosure suffered by co-accused Angrej Singh. Also he is not involved in any other criminal case.

4. *Per contra*, learned State counsel, on instructions from quarter concerned, has acknowledged the above factual position; but opposes the prayer on the premise that commercial quantity of contraband was recovered from co-accused and as such, bar under Section 37 of NDPS Act, would apply.

5. Heard learned counsel for both the sides and perused the paper book.

6. It is not in dispute that petitioner was granted interim bail by this Court on 12.12.2023 and the order reads as under:-

“Learned counsel for petitioner contends that he is in custody since 16.02.2023. He is not named in the FIR; rather nominated on the basis of disclosure made by main accused Angrej Singh on 14.09.2022 and except



disclosure, there is no material to connect the petitioner with the alleged commission of crime.

Also contends that there is no other criminal case pending against the petitioner. Charges were framed on 16.03.2023 and out of 15 prosecution witnesses, none has been examined so far.

Learned State counsel seeks time to verify the above factual position.

Posted for 08.02.2024.

***Till the next date of hearing,** petitioner is ordered to be released on interim bail in this case on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.”*

7. Learned State counsel is not able to controvert that after granting interim bail vide order dated 12.12.2023, petitioner is regularly appearing before learned Special Court and never misused the concession in any manner.

8. Also acknowledged by both sides that there is no other criminal case pending against the petitioner. Although recovery against the co-accused is alleged to be commercial in nature, but concededly, no contraband was recovered from the petitioner. Therefore, it would be debatable during trial as to whether petitioner was in any way connected with the recovery of alleged contraband. Be that as it may, at this stage, it is very difficult to comprehend that petitioner was in conscious possession of the alleged contraband.



9. Thus, in such a scenario, there is no hesitation to record the “Twin Test” satisfaction in favour of the petitioner as per Section 37(1)(ii) of the NDPS Act in the following manner:-

(i) *Prima facie*, there is no material to indicate that petitioner was found in conscious possession of the alleged contraband; hence, being a debatable question, shall be decided during trial and in such a scenario, it is very difficult to say that petitioner is guilty of the alleged offence.

(ii) After registration of the FIR in question, petitioner has not been involved in any case under the NDPS Act.

10. Needless to say that above “Twin Test” satisfaction has been recorded only for the purpose of bail application and same be not treated as an opinion on pending trial.

11. It is also not in dispute that petitioner remained in custody for about 10 months; report under Section 173 of Cr.P.C. was submitted on 06.03.2023; charges were framed on 16.03.2023 and out of 15 witnesses, only one remains to be examined and trial is likely to take sufficient long time to conclude.

12. Consequently, present petition is allowed. Interim order dated 12.12.2024 is made absolute. Petitioner shall be admitted to bail on his furnishing bail/surety bonds to the satisfaction of learned Special Court/Chief Judicial Magistrate/Duty Magistrate concerned.

13. Petitioner shall appear on each and every date of hearing and to fully co-operate with learned Special Court without seeking any unnecessary adjournment(s).

14. The above observations may not be construed as an expression of opinion on the merits of the case.



15. It is clarified that in case of recurrence or any misuse of concession of bail on the part of the petitioner, State of Punjab would be at liberty to move an appropriate application for recalling of this order.

Pending application(s), if any, shall also stand disposed off.

10.03.2025

(MAHABIR SINGH SINDHU)
JUDGE

d.gulati

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No