



In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-43064 of 2025

Reserved On: 04.11.2025

Pronounced On: 29.11.2025

Sunil Kumar

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Mr. L.S.Sekhon, Advocate
for the petitioner(s).

Mr. Rohit Bansal, Senior Deputy Advocate General,
Punjab, for the respondent.

Surya Partap Singh, J.

1. For the commission of offence punishable under Sections 22C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter being referred as “the NDPS Act” only, the FIR No. 115 dated 28.08.2023 has been lodged in Police Station Cantt. Bathinda, District Bathinda, Punjab. This is first petition for bail, filed by the petitioner, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, hereinafter being referred to as “BNSS” only.

2. Briefly stating the facts emerging from the record are that the FIR of this case came into being when a chance recovery of 80000 tablets of Tramadol was effected. As per the facts projected by the prosecution, the FIR in this case came into being when a police party headed by ASI

and it spotted a car bearing registration No. HR-10-P-6777 inside the gate of a house. As per prosecution, from the car a young person carrying a black coloured kit bag alighted and the moment he noticed the police party around him, he got frightened and tried to sit back in the car. As per prosecution, on the basis of above mentioned suspicious behaviour, the above said person was checked and it was found that in the back seat of the car there were three heavy boxes of cardboard. As per prosecution, when the contents of the above mentioned boxes were checked, it was found that in the boxes the abovesaid person was carrying 80000 tablets of Tramadol.

3. Heard.

4. It has been contended on behalf of petitioner that the petitioner has been falsely implicated in the present case and otherwise also, he has already suffered a long incarceration for being in custody for a period of more than two and a half years. As per learned counsel for the petitioner, the trial is taking place at snail's pace, as the prosecution, in the last more than two years, has been successful in examining only two out of 21 prosecution witnesses. The learned counsel for the petitioner has further contended that nothing is left to be recovered from the possession of the petitioner, and that the trial is not likely to be concluded in the near future, and therefore, the petitioner is entitled for the benefit of bail. In support of his arguments, the learned counsel for the petitioner has placed reliance upon the principles laid down by the Hon'ble Supreme Court of India in the cases of ***Samimbanu alias Sammo v. State of Gujarat*** (Special Leave to Appeal (Criminal) No. 5513 of 2025, decided on 06.08.2025), ***Sajedabanu Munnabhai Shekh alias Saraswati Manoj Rajubhai Rajput v. State of Gujarat*** (Special Leave

Petition (Criminal) No. 8135 of 2025, decided on 04.08.2025), ***Bhadresh Kumar Patel v. Union of India*** (Special Leave to Appeal (Criminal) No. 2622 of 2025, decided on 29.07.2025), and ***Md. Tajiur Rahaman alias Tajiur Rahaman v. The State of West Bengal*** (Special Leave to Appeal (Criminal) No. 12225 of 2024, decided on 08.11.2024).

5. On the other hand, the learned State counsel has controverted the above mentioned arguments. According to learned State counsel, in the present case, the recovery of contraband from the possession of the petitioner is very heavy, and that the quantity of contraband recovered from the possession of petitioner being commercial quantity unless the twin conditions enshrined under Section-37 of the NDPS Act are complied with, the petitioner cannot claim the benefit of bail.

6. In addition to above, the learned State counsel has also argued that long incarceration is not a ground for release of petitioner on bail. In this regard, the learned State counsel has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the cases of ***Narcotics Control Bureau v. Mohit Aggarwal (2022) 18 Supreme Court Cases 374*** and ***Union of India v. Ajay Kumar Singh alias Pappu*** (Special Leave Petition (Criminal) No. 2351 of 2023, decided on 28.03.2023).

7. It has also been pointed out by the learned State counsel that the present petition is the second petition for bail, and that from the date of dismissal of former bail application, there is no significant change in the circumstances.

8. The record has been perused carefully.

9. As far as the principles governing the benefit of bail in a case

related to NDPS Act, are concerned, the principles of law laid down by the Hon'ble Supreme Court in the case of '*Mohd. Muslim alias Hussain v. State (NCT of Delhi), (2023) 18 Supreme Court Cases 166*' are relevant, wherein the Hon'ble Supreme Court has 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 436-A which is applicable to offences under the Act.

10. In this regard it is also relevant to mention here that the Hon'ble Supreme Court of India in the case of *Man Mandal and Another v. The State of West Bengal*, Special Leave Petition (Criminal) No.8656 of 2023 decided on 14.09.2023 and *Rabi Prakash v. State of Odisha, 2023 SCC Online SC 1109*, extended the benefit of bail to the accused, who had been incarcerated for a period of almost 2-3 years and the trial was likely to take considerable time. The above-mentioned benefit has been given 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 principles must override the statutory embargo contained under Section-37 of the NDPS Act.

11. In addition to above, in a recently pronounced verdict in the case of *Santosh Pawar v. State of Chhattisgarh & Another* (Criminal Appeal No.4883/2025, decided on 14.11.2025) the Hon'ble Supreme Court observed that rigors of Section 37 of NDPS Act will not be a bar for considering the case of an accused for bail as it comes with a condition that the prosecution would press for an early completion of trial. In the above-mentioned case the Hon'ble Supreme Court of India held that appellant who

was being prosecuted for being in possession of commercial quantity of narcotic substance, was entitled for bail in view of her incarceration for a period of 19 months.

12. In another case, i.e. in the case of *Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 Supreme Court Cases 51* prolonged incarceration and inordinate delay engaged the attention of the Hon'ble Supreme Court of India, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply.

13. In the case of *Ismail Khan alias Pathan v. State of Rajasthan* (Criminal Appeal No.4911 of 2025, decided on 18.11.2025) with regard to recovery of commercial quantity of narcotic substance the Hon'ble Supreme Court of India accorded the benefit of bail to the accused in view of prolonged incarceration for a period of 02 years and 08 months of the accused.

14. The similar benefit has been taken in another appeal i.e. *Ebrahim alias Ibrahim SK v.. The State of West Bengal* [Special Leave Petition (Criminal) No.15699 of 2025, decided on 14.11.2025] and in the case of *Pamesh Arora v.. UT Chandigarh* (Criminal Appeal No.4872 of 2025, decided on 14.11.2025).

15. Similarly in the case of *Sajedabanu Munnabhai Shekh alias Saraswati Manoj Rajubhai Rajput (supra)*, the Hon'ble Supreme Court of India accorded the benefit of bail to the accused in a case where there was

recovery of commercial quantity of contraband and this benefit was given on the ground of prolonged incarceration.

16. In the case of *Md. Tajiur Rahaman alias Tajiur Rahaman (supra)*, the conditions enshrined under Section 37 of the NDPS Act has been relaxed by the Hon'ble Apex Court, in view of long period spent by the accused in custody.

17. If the facts and circumstances of the present case are analyzed in the light of above-mentioned principles of law, it transpires that:-

- i) that the petitioner is already facing prolonged incarceration for a period of almost two years & three months;
- ii) that the trial is not likely to be completed in near future as it taking place at a slow pace, as out of 21 only two prosecution witnesses have been examined so far;
- iii) that former petition for bail, moved by the petitioner, was not decided on merits;
- iv) that nothing is left to be recovered from the possession of petitioner;
- v) that there are certain arguable points with regard to violation of various rules/procedures in collection of samples and conduct of investigation;
- vi) that there is nothing on record to show that if released on bail, the petitioner will tamper with the prosecution evidence or influence the witnesses;

- vii) that detention of the petitioner behind the bars is not likely to serve any purpose;
- viii) that there is nothing on record to show that while on bail, the petitioner is likely to tamper with the evidence or influence the witnesses; and
- ix) that there is nothing on record to show that while on bail the petitioner will not participate/cooperate in the trial.

18. With regard to the legal aspect involved in the instant case, it is relevant to mention that the Hon'ble Supreme Court in the case of ***Dataram v. State of Uttar Pradesh and Another***(2018) 3 Supreme Court Cases 22, has observed that *“a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions*

rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.”

19. The principles laid down by the Hon’ble the Supreme Court of India in the case of **Satender Kumar Antil** (*supra*), are also relevant in this case. In the above mentioned case, it has been observed that *“the rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.”*

20. Recently, in the case of **Tapas Kumar Palit v. State of Chhattisgarh**, 2025 SCC Online SC 322 the Hon’ble Supreme Court of India has observed that *“if an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed.”* It has also been observed by the Hon’ble Supreme Court of India in the above mentioned case that *“delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides*

many tools for the Judges to use in order to ensure that cases proceed efficiently.”

21. Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as mandated by Hon’ble Apex court in *Balwinder Singh versus State of Punjab and Another 2024 SCC Online SC 4354*.

22. If the cumulative effect of all the above mentioned factors, involved in the instant case, is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail, and that the present petition deserves to be allowed.

23. Accordingly, without commenting anything on the merits of the case, the present petition is hereby **allowed**. The petitioner is hereby ordered to be released on bail on his furnishing personal bond and surety bond(s) to the satisfaction of learned trial Court, subject to the following conditions:-

- a) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority;
- b) that the petitioner shall at the time of execution of bond, furnish the address to the Court concerned and shall notify the change in address to the trial Court, till the conclusion of trial; and

c) that the petitioner shall not leave India without prior permission of the trial Court.

24. In case, the petitioner violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

25. It is, however, made clear that any observation made here-in-above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

(Surya Partap Singh)
Judge

November 29, 2025
“DK”

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