



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CRM-M No.46231 of 2025 (O&M)
Date of Decision: 01.12.2025

Shiva Kumar

.....Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Mr. Manish Puri, Advocate for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

SURYA PARTAP SINGH, J. (Oral):

For the commission of offence punishable under Sections 109, 132, 221, 3(5) of BNS, 25/54/59 of Arms Act and 21/61/85, 27-A and 29 of Narcotic Drugs & Psychotropic Substances Act, 1985, hereinafter being referred to as NDPS Act' [Section 111 of BNS added later on], the FIR No.14 dated 22.05.2025, has been lodged in Police Station Nangal Bhur. The petitioner has been arrested in the above mentioned case as an accused. Since the petitioner is in custody, he has filed the present petition for the benefit of bail. This is first petition for bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Briefly stated the facts emerging from record are that the FIR of this case came into being in the backdrop of following events:

On 22.05.2025 a white colour Verna car bearing registration number, i.e. JK-02-CT-0369, was being chased by a police team on the basis of



suspicion and while chasing a message in advance was given to a police party present at Mirthal check post. When the barricades were raised and checking of vehicles started by the police team at Mirthal check post, the above mentioned Verna car approached the barricades, and when the car driver noticed that the checking was going-on he abruptly tried to turn his car back but in the meantime the police party following them reached the spot and tried to stop the abovesaid car but the occupants of the car, fired gun shot on the police party which was retaliated by the police officers with their official weapons. However, despite exchange of gun-shots the driver of said car managed to run away from the spot, but one of the occupant of the car suffered bullet injury. It is the case of the prosecution that the entire incident was recorded in a CCTV camera.

3. According to the prosecution, in view of above mentioned development, the FIR for the commission of offence punishable under Sections 109, 132, 221, 3(5) of BNS, 25/54/59 of Arms Act and 21/61/85 of NDPS Act [Section 111 of BNS was added later on] was lodged in the Police Station Nangal Bhur, and the investigation taken-up. As per prosecution during the course of investigation it was found that the name of the occupant of the car, who had suffered bullet injury was 'Rajiv Kumar', and that he was accompanied with 'Dheeraj' and 'Shiva'. It is the case of the prosecution that the above said accused were later on traced, and apprehended and during the course of investigation the accused 'Dheeraj Kumar' had suffered a disclosure statement pursuant to which 263.3 grams of 'Heroin' and 1 pistol, 2 live cartridges and the car used at the time of commission of offence was



recovered.

4. It has been further alleged by the prosecution that on interrogation of accused 'Dheeraj' it was revealed that the petitioner had facilitated the above named accused in getting the injured 'Rajeev Kumar' admitted in hospital and also in avoiding their arrest by the police.

5. Heard.

6. It has been contended on behalf of the petitioner that the petitioner is innocent as he was not present on the spot at the time of occurrence, and that the only role attributed to the petitioner is that on humanitarian ground he had taken the injured 'Rajeev Kumar' in his car to the hospital. As per learned counsel for the petitioner, one of the accused is the first cousin of the petitioner, and that residence of the petitioner was closed to the place of occurrence and therefore, with *bona fide* intentions the petitioner had helped the injured 'Rajeev Kumar' in seeking the treatment. According to learned counsel for the petitioner, since the petitioner has nothing to do with the recovery of contraband from the possession of other accused, or with the incident of firing of gun-shot upon the police party, he is entitled for the benefit of bail.

7. Per contra, the learned State counsel has contended that the allegations against the petitioner are of extending help to the accused who were involved in a heinous crime, and therefore, the petitioner neither deserves any sympathy of the Court nor he is entitled for the benefit if bail.

8. In addition to above the learned State counsel has also relied upon the principles of law laid down by the Hon'ble Supreme Court of India in the



case of *The State (NCT of Delhi) Narcotics Control Bureau v. Lokesh Chadha*, (2021) 5 SCC 724, wherein it has been held that no person accused for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

9. The record has been perused carefully.

10. 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 @ 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.

11. In this regard it is also relevant to mention here that the Hon'ble Supreme Court of India in the case of 'Manmandal and Another v. State of West Bengal', Special Leave Petition (Criminal) No.8656 of 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.

12. In addition to above, in a recently pronounced verdict in the case of ‘Santosh Pawar Vs. State of Chhattishgarh & Anr.’ Criminal Appeal No.4883/2025, the Hon’ble Supreme Court observed that rigours 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.

13. Similarly in another case i.e. in the case of ‘Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 SCC 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.

14. In the case of ‘Ismail Khan @ Pathan vs. State of Rajasthan’ Criminal Appeal No.4911 of 2025 wherein the quantity of recovered contraband was 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.



15. The similar benefit has been taken in another appeal i.e. SLP No.15699-2025 titled as 'Ebrahim @ Ibrahim SK vs. The State of West Bengal' and in the case of 'Pamesh Arora vs. UT Chandigarh' Criminal Appeal No.4872 of 2025.

16. 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 in custody for a period of more than 06 months;
- ii) that neither the contraband was recovered at the instance of petitioner nor the petitioner was present at the spot at the time of exchange of fire;
- iii) that the only role attributed to the petitioner is that he helped the injured/accused 'Rajeev Kumar' in getting medical treatment;
- iv) that the petitioner has clean antecedents;
- v) that the trial is not likely to be concluded in near future;
- vi) that nothing is left to be recovered from the possession of petitioner;
- vii) that detention of petitioner in judicial lock-up is not likely to serve any purpose;
- viii) that there is nothing on record to show that if released on bail, the petitioner may tamper with the evidence or influence the witnesses;



- ix) that there is nothing on record to show that if released on bail, the petitioner will not co-operate/participate in the trial.

17. In the present case, the principles of law laid down by the Hon'ble Supreme Court in the case of 'Dataram versus State of Uttar Pradesh and another', (2018) 3 SCC 22, are also relevant, wherein it has been 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"*.

18. Recently, in the case of Tapas Kumar Palit Vs. 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 abovementioned 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"*.

19. 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.

20. If the cumulative effect of all the abovementioned 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.

21. 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:-

- (i) 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.
- (ii) 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 final decision of the trial; and
- (iii) that the petitioner shall not leave India without prior permission of the trial Court.

22. 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.

(SURYA PARTAP SINGH)
JUDGE

01.12.2025
Manoj Bhutani

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