



In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-46906 of 2025

Date of Decision: 30.10.2025

Sandeep Kumar

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

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

Present: Mr. B.S.Beniwal, Advocate
for the petitioner(s).

Ms. Deepali Verma, Assistant Advocate General,
Haryana, for the respondent.

Surya Partap Singh, J.

1. For the commission of offence punishable under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter being referred to as “the NDPS Act” only, [Section 29 of the NDPS Act and Section 318(4) of the Bharatiya Nyaya Sanhita, 2023 were added later on], the FIR No. 255 dated 04.07.2024 has been lodged in Police Station Agroha, District Hisar, Haryana.

2. During the course of investigation of above mentioned case, the petitioner was arrested on 28.04.2025. The petitioner is in custody since then, and therefore, for the concession of bail he has approached this Court, by virtue of present petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, hereinafter being referred to as “BNSS” only.

3. Briefly stating the facts emerging from the record are that the

Narcotic Control Bureau Unit Hisar, who had informed that when he was present at Adampur road alongwith his team members in official vehicle an informer met him and gave a tip-off that Sahdev son of Krishan Kumar had brought drugs from Rajasthan in his ETIOS car No. RJ-23CF-2546. As per prosecution, the above named informant had also stated that the above-mentioned vehicle was parked by him at Sai Service Station, Agroha.

4. It is the case of the prosecution that acting upon the above mentioned information the above named ASI completed the requisite paper work, and then conducted a raid at Sai Service Station Agroha, where ETIOS car was found. According to prosecution the owner of above-mentioned service station told that the car was parked there by Sahdev, who was accompanied with his wife and a young daughter. It was also stated by the owner of above-mentioned service station that after parking of car, Sahdev had used his two-wheeler to drop his wife and daughter at his home.

5. As per the case set out by the prosecution, thereafter requisite formalities for the search and seizure of car were undertaken by the above named ASI, who called a gazetted officer on the spot and opened the lock of the car. The prosecution has alleged that on search of the boot of the car three black coloured bags were found and when the contents of above mentioned bags were checked it was found to be poppy husk. According to prosecution, on measurement the weight of above-mentioned contraband was found to be 75.370 kg.

6. The prosecution has further alleged that after recovery of above mentioned contraband, the accused Sahdev was arrested, who on interrogation suffered a disclosure statement, wherein he disclosed that he

was transporting contraband of similar kind regularly in the past also, and that he had been supplying such drugs to the petitioner also.

7. Heard.

8. It has been contended on behalf of the petitioner that the petitioner is innocent having no nexus, whatsoever, with the commission of crime, and that he has been falsely roped in the present case on the basis of disclosure statement suffered by his co-accused. It has also been argued by learned counsel for the petitioner that nothing has been recovered from the possession of petitioner, and that he has already suffered long incarceration for being in custody for a period of more than 07 months. According to learned counsel for the petitioner the detention of petitioner in judicial lockup is not likely to serve any useful purpose. The learned counsel for the petitioner has further contended that in the above mentioned prevailing circumstances, the petitioner is entitled for the benefit of bail.

9. Per contra, the learned State counsel has argued that the petitioner has been nominated by his co-accused, from whose possession commercial quantity of liquor has been recovered. According to learned State counsel since commercial quantity of contraband has been recovered in this case, without satisfying the twin conditions as prescribed under Section 37 of the NDPS Act, the benefit of bail cannot be claimed by the petitioner.

10. To deal with given fact-situation, the principles of law have been laid down by the Hon'ble Supreme Court of India in the case of 'Smt. Najmunisha, Abdul Hamid Chandmiya @Ladoo Bapu Vs. State of Gujarat, Narcotics Control Bureau', 2014 INSC 290, wherein the Hon'ble Supreme Court of India has ruled that confessional statement recorded under Section

67 of NDPS Act cannot be considered to be admissible, as confessional statement against the accused.

11. It is also relevant to mention here that the situation, similar to the present case, cropped-up in *Special Leave to Appeal (Crl.) No.1266/2023* titled as '*Vijay Singh Vs. The State of Haryana*'. In the above mentioned case, the petitioner was not present on the spot at the time of recovery and he was implicated solely on the basis of statement of co-accused. The Hon'ble Supreme Court of India in the above mentioned case afforded the benefit of bail to the accused.

12. Similarly, in the case of '*Surender Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence*' 2018(3) RCR (Criminal) 954, it has been held by the Hon'ble Supreme Court of India that the disclosure statement of co-accused is inadmissible against another accused, as the disclosure statement is not a substantive piece of evidence against other accused.

13. Similar principle has been laid down by the Hon'ble Supreme Court of India in the case of '*Preet Kamal Vs. State of Punjab*', 2018(4) RCR (Criminal) 938, wherein it has been held that the disclosure statement of an accused can be used only against the person making the same, and not against the co-accused.

14. In '*Tofan Singh Vs. State of Tamil Nadu*', 2021(4) SCC 1 also, it has been observed by the Hon'ble Supreme Court of India that confessional statement of accused recorded under Section 67 of NDPS Act cannot be admitted in evidence, as a confession.

15. It is also relevant to mention here that from the possession of

co-accused of the petitioner, commercial quantity of contraband has been recovered and that is why, the learned Special Judge has observed that rigors of Section 37 of the NDPS Act are applicable in the present case. However, in this regard, the law propounded by the Hon'ble Supreme Court of India in the case of '*Mohd. Muslim @Hussain Vs. State (NCT of Delhi)*, 2023 AIR SC 1648, is relevant, wherein the Hon'ble Supreme Court of India has ruled that principles of fairness embodied under Article 21 of the Constitution override the statutory restrictions on grant of bail under Section 37 of the NDPS Act.

16. The record has been perused carefully.

17. A perusal of record shows that in the present case, there are certain relevant factors, which needs to be taken into consideration for arriving at any decision with regard to instant petition. Those factors are:-

- i) that the petitioner has already suffered long incarceration for being in custody for a period of more than 07 months;
- ii) that nothing is left to be recovered from the possession of petitioner;
- iii) that the petitioner has been nominated on the basis of disclosure statement of co-accused, namely Sahdev, and the above-mentioned disclosure statement was suffered by the co-accused when he was in the custody of police. Thus, there is a question mark with regard to admissibility of such disclosure statement in evidence;
- iv) that detention of petitioner in judicial lock up is not likely to serve any purpose;

- v) that there is nothing on record to show that if released on bail the petitioner is likely to tamper with the evidence, or influence the witnesses; And
- vi) that nothing has been recovered from the possession of petitioner, and therefore, the rigors of Section 37 of the NDPS Act are not attracted in the present case.

18. If the cumulative effect of all the above mentioned factors is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail.

19. Accordingly, without commenting anything on the merits of the case, the present petition is hereby allowed and the petitioner is admitted to bail subject to his furnishing bail bonds to the satisfaction of learned trial Court. It is further clarified that on the day when petitioner applies for furnishing the bail bonds, if the learned trial Court is not available, the learned Sessions Judge shall be at liberty to assign the case, for the above said purpose, to any other Court.

20. 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

October 30, 2025
“DK”

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