

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

2025 PHHC:120310



228

CRM-M-47933-2025

Date of decision: 04.09.2025

Goli @ Banty @ Banty Masih

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vidit Bansal, Advocate for the petitioner.

Mr. Baljinder Singh Sra, Addl. AG, Punjab.

SUMEET GOEL, J. (ORAL)

1. The present petition is second petition preferred on behalf of the petitioner under Section 483 of BNSS 2023 for grant of regular bail in case bearing FIR No.29 dated 26.03.2023, registered for the offences punishable under Sections 21, 23, 27A, 29 of NDPS Act, Section 66(F) of Information Technology Act, 2005 and Section 25 of Arms Act, 1959, at Police Station Kalanaur, District Gurdaspur.

2. The gravamen of the FIR in question is that the petitioner is an accused of being involved in an FIR pertaining to NDPS Act and Arms Act

involving alleged recovery of six pistols, seven magazines alongwith 77 bullets and Rs.35,70,000/- of drug money as well from the accused in the FIR in question.

3. Learned counsel appearing for the petitioner has submitted that the petitioner was arrested on 11.04.2023. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has further argued that mandatory provisions of NDPS Act/Cr.P.C have not been complied with while effecting recovery and, thus, the petitioner cannot be said to be connected with the same in any manner whatsoever. Learned counsel for the petitioner has further argued that the petitioner is in custody for more than 2 years. He has placed reliance upon an order passed by Hon'ble Supreme Court on 28.04.2025 in ***SLP (Crl.) No.3502 of 2025*** granting regular bail to co-accused namely Jaswinder Singh @ Kala, relevant whereof, reads as under:

“1. The petitioner seeks leave to challenge the judgment and order dated 25.11.2024 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No.33633-2024(O&M) whereby the petition filed by the petitioner was dismissed.

2. The petitioner has been in custody for a period of one year and four months in connection with FIR SLP (Crl.) No.3502/2025 No.29/2023 dated 26.03.2023 registered at P.S. Kalanaur, District Gurdaspur under Sections 21, 23, 27(A), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, Section 66(F) of the Information Technology Act, 2000 and Section 25 of Arms Act, 1959.

3. Having heard learned counsel for the parties, and perused the material placed on record, we are of the considered view that the petitioner has made out case for interference with the impugned order dated 25.11.2024.

4. Considering the totality of circumstances and also the fact that the petitioner is in custody for a period of one year and four months, we are inclined to grant bail to the petitioner on such terms and conditions as may be fixed by the Trial Court. Ordered accordingly.

5. To comply with the order, the petitioner shall be produced before the Trial Court forthwith.

6. The special leave petition is, accordingly, disposed of.

7 Pending application(s), if any, stands disposed of.”

4. Learned State counsel has opposed the present petition by arguing that the allegations raised against the petitioner are serious in nature. Learned State counsel has further submitted that the FIR in question pertains to recovery of six pistols, seven magazines alongwith 77 bullets and Rs.35,70,000/- of drug money as well and, therefore, the bar under Section 37 of the NDPS, 1985 is attracted. Furthermore, expressing concerns about the possibility of the petitioner fleeing from the trial proceedings, learned State counsel submits that petitioner ought not be granted the concession of regular bail. He has, accordingly, sought for dismissal of the petition in hand. He also seeks to place on record custody certificate dated 04.09.2025 in Court, which is taken on record.

5. I have heard counsel for the rival parties and have gone through the available records of the case.

6. The petitioner was arrested on 11.04.2023 and is in continuous custody. Thereafter, investigation was carried out and challan was presented on 21.09.2023 wherein total 22 prosecution witnesses have been cited, out of which only one has been examined-in-chief till date. The rival contentions raised at Bar give rise to debatable issues shall be ratiocinated upon during the course of trial. This Court does not deem it

appropriate to delve deep into these rival contentions, at this stage, *lest* it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

6.1 The trial is indeed procrastinating and folly thereof cannot be saddled upon the petitioner. As per custody certificate dated 04.09.2025 filed by the learned State counsel, the petitioner has already suffered incarceration for a period of 02 years, 04 months and 16 days & is stated to be shown in one more case. In this view of the matter, the rigor imposed under Section 37 of the NDPS Act stands diluted in light of the Article 21 of the Constitution of India.

6.2. This Court in a judgment titled as ***Kulwinder versus State of Punjab*** passed in ***CRM-M-64074-2024*** (2025:PHHC:002695); after relying upon the *ratio decidendi* of the judgments of the Hon'ble Supreme Court in Hussainara Khatoon vs. Home Secy., State of Bihar (1980) 1 SCC 81; Abdul Rehman Antulay vs R.S. Nayak (1992) 1 SCC 225; Javed Gulam Nabi Shaikh vs. State of Maharashtra and another, 2024(3) RCR (Criminal) 494; Mohd Muslim @ Hussain vs. State (NCT of Delhi) reported as 2023 INSC 311; Criminal Appeal No.245/2020 dated 07.02.2020 titled as "Chitta Biswas Alias Subhas vs. The State of West Bengal"; "Nitish Adhikary @ Bapan vs. The State of West Bengal", Special Leave to Appeal (Crl.) No.5530-2022 dated 22.08.2022 titled as "Mohammad Salman Hanif Shaikh vs. The State of Gujarat"; Criminal Appeal No.1169 of 2022 dated 05.08.2022 titled as Gopal Krishna Patra @ Gopalrusma vs. Union of India, and Ankur Chaudhary vs. State of Madhya Pradesh, 2024(4) RCR (Criminal) 172; has held, thus:

“7.8. *The right to a speedy and expeditious trial is not only a vital safeguard to prevent undue and oppressive incarceration; to mitigate anxiety and concern accompanying the accusation as well as to curtail any impairment in the ability of an accused to defend himself, but there is an overarching societal interest paving way for a speedy trial. This right has been repeatedly actuated in the recent past and the ratio decidendi of the above-referred to Supreme Court’s judgments have laid down a series of decisions opening up new vistas of fundamental rights. The concept of speedy trial is amalgamated into the Article 21 as an essential part of the fundamental right to life and liberty, guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed at the time of the arrest of the accused and consequent incarceration which continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result due to impermissible and avoidable delay since the time of the commission of the offence till the criminal proceedings consummate into a finality, could be averted. The speedy trial, early hearing and quick disposal are sine qua non of criminal jurisprudence. The overcrowded Court-dockets, the heavy volume of work and the resultant pressure on the prosecution and the Police, indubitably keeps the entire criminal jurisprudential mechanism under stress and strain. However, this cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. It does not serve any credit to the criminal justice system, rather it makes for a sad state of affairs. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the Court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend himself. It goes without saying that the consequences of pre-trial detention are grave. Accused, presumed innocent, till proven otherwise, are subjected to psychological and physical deprivations of jail-life, usually under onerous conditions. Equally important, the burden of detention of such an accused frequently falls heavily on the innocent members of his family.*

There is yet another aspect of the matter which deserves consideration at this stage. The allegations in the present case relate to accused being involved in an FIR relating to commercial quantity of contraband under the NDPS Act, 1985. While considering a bail petition in a case involving commercial quantity, the Court has to keep in mind the rigours enumerated under Section 37 of NDPS Act, 1985 which mandates that Courts can grant bail to an accused only after hearing the public prosecutor and after having satisfied itself of twin conditions which are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not likely to commit any offence while on bail. The stringent rigours of Section 37 of the NDPS Act, 1985 must be meticulously scrutinized against the backdrop of accused’s fundamental right to a speedy trial. The right to life and personal liberty cannot be rendered nugatory by unwarranted delays in the judicial process, particularly where such delay(s) is neither attributable to the accused nor justified at the end of the prosecution by cogent reasons. An individual cannot be kept behind bars for an inordinate period of time by taking refuge in rigours laid down in

Section 37 of the NDPS Act, 1985. The legislature in its wisdom, in order to ensure speedy and timely disposal of the cases under the Act, has provided for the constitution of special Courts under Section 36-A of the Act. However, this Court cannot turn Nelson's eye to the protracted delays and systematic inefficiency that frustrate this legislative purpose. A Court of law is duty-bound to ensure that it does not become complicit in violation of an individual's fundamental rights, notwithstanding anything contained in a statute. While dealing with bail petition in a case governed by the rigours of Section 37 of the NDPS Act, 1985, the Court must strike a judicious balance between the legislative intent to curb the menace of drugs and the sacrosanct right of the accused to a fair and expeditious trial. Prolonged incarceration, without justifiable cause, risks transforming pre-trial detention into punitive imprisonment, an outcome antithetical to the principle of justice and equity.

Ergo, the unequivocal inference is that where the trial has failed to conclude within a reasonable time, resulting in prolonged incarceration, it militates against the precious fundamental rights of life and liberty granted under the law and, as such, conditional liberty overriding the statutory embargo created under Section 37 of the NDPS Act, 1985 ought to be considered as per facts of a given case. In other words, grant of bail in a case pertaining to commercial quantity, on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985."

6.3. Indubitably, the present petition is the second attempt on behalf of the petitioner for securing regular bail. The first one bearing no. CRM-M-64998-2023 was dismissed as withdrawn on 25.11.2024. However, keeping in view the entirety of facts and circumstance of the case in hand, especially keeping in view the extended custody and pace of trial, this Court is inclined to favourably consider the instant plea for bail. A profitable reference, in this regard, can be made to a judgment of this Court passed in **CRA-S-2332-2023** titled as **Rafiq Khan versus State of Haryana and another**; relevant whereof reads as under:

"10. As an epilogue to the above discussion, the following principles emerge:

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

Further, as per custody certificate dated 04.09.2025 filed by the learned State counsel, the petitioner is stated to be involved in one more case. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon’ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012 (1) RCR (Criminal) 586***; a Division Bench judgment of the Hon’ble Calcutta High Court in case of ***Sridhar Das v. State, 1998 (2) RCR (Criminal) 477*** & judgments of this Court in ***CRM-M No.38822-2022*** titled as ***Akhilesh Singh v. State of Haryana***, decided on 29.11.2021, and ***Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191***.

Suffice to say, the further detention of the petitioner in custody is not required in the facts and circumstances of the case.

7. In view of the above, the petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the learned concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cell phone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqha Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.
- (viii) The petitioner shall submit, on the first working day of every month, an affidavit, before the concerned trial Court, to the effect that he has not been involved in commission of any offence after being released on bail. In case the petitioner is found to be involved in any offence after his being enlarged on bail in the present FIR, on the basis of her affidavit or otherwise, the State is mandated to move,

- forthwith, for cancellation of his bail which plea, but of course, shall be ratiocinated upon merits thereof.
8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.
9. Ordered accordingly.
10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

September 04, 2025
Naveen

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