



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

CRM-M-49526-2025

Date of decision : 10.09.2025

Nishan Singh @ Mithu

....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.S. Gill, Advocate for the petitioner.

Mr. Raj Karan Singh, A.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed for grant of regular bail in case FIR No.231 dated 28.08.2022, under Sections 22, 29, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Tanda, District Hoshiarpur.

2. Succinctly the facts of the case are that the Police party while on patrolling on 28.08.2022, saw a clean shaved young man standing on the road side. On seeing the police, he got perplexed. He took out a heavy polythene packet from the right side of his lower (payjama) and threw it on the road. On suspicion, he was stopped. On asking, he disclosed his name as Nishan Singh @ Mithu (present petitioner). He was suspected to be carrying some contraband in the polythene being thrown by him and thus, the same was searched. On conducting the search, 106 grams of intoxicant powder was recovered from the polythene thrown by him. He failed to produce any license regarding possession of the same and hence, the FIR was registered and he was arrested on spot. The investigation commenced. The samples taken were sent to the FSL. As per the FSL report, the samples of the intoxicant powder was found to be containing Alprazolam. Thus, for the possession of 106 grams of Alprazolam the



petitioner was prosecuted. On completion of investigation, challan was presented. On framing of charges, the trial Court commenced the trial. The petitioner approached the Learned Judge, Special Court, Hoshiarpur praying for grant of bail, however, finding no merit, the same was declined after hearing both the sides by Learned Judge, Special Court, Hoshiarpur vide order dated 11.03.2025. Aggrieved by the same, the petitioner is before this Court by way of filing of present petition for grant of bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. He submits that the compliance of Section 50 of NDPS Act, was mandatory in conducting the search, however, there is violation of the same as well. He submits that the alleged recovery has been effected from a public place, however, no independent witness was joined by the investigating agency. He submits that as per the Schedule of NDPS Act, the contraband weighing more than 100 grams is commercial quantity, whereas the recovery effected from the petitioner is 106 grams, which is marginally above the same. He submits that the petitioner is behind bars from the last more than 03 years, however, the prosecution is intentionally delaying the trial by not producing its witnesses. It is submitted that theailable warrants have already been issued by the trial Court for securing the presence of the witnesses but despite that they have not appeared. He thus, submits that in the facts and circumstances of the case, the petitioner deserves to be granted bail.

4. Per contra, learned State counsel has opposed the submissions made by the counsel for the petitioner and submits that the alleged recovery from the petitioner is of 106 grams of intoxicant powder



which is a commercial quantity and thus, provisions of Section 37 of NDPS Act, are attracted in the present case. He, on instructions, has submitted that out of total 08 prosecution witnesses only 01 witnesses has been examined till date. He has produced the custody certificate of the petitioner on record.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the alleged recovery effected from the petitioner is 106 grams of Alprazolam whereas the commercial quantity is marginally above the same. The petitioner is behind bars from last more than 03 years. As per custody certificate, the petitioner has suffered incarceration of 03 years and 11 months as on 09.09.2025. It further reflects that though the petitioner is involved in other cases, however, the same are under IPC and there is no other case under the NDPS Act.

6. In view of the facts and circumstances of the present case, this Court cannot ignore the fact that the speedy trial is the fundamental right of every accused. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260**, this Court is of the opinion that the case of the petitioner is covered by the ratio of law laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on



record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. xxxxx

21.it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

22. xxxxx

23. *There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.*

7. The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court.

8. The Hon’ble Supreme Court in *Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya Vs. National Investigation Agency, 2022(1) SCC 695* has held as under:

“Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be

avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

9. The Hon’ble Supreme Court in a recent decision dated 03.07.2024 in ‘**Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024**’, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitu-
tion of India.

10. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

11. In case the bail bonds are not furnished by the petitioner during the period of 07 days from today, then his further custody period after one week will not be counted in the present case.

12. The non-examination of the prosecution witnesses, is totally deprecated. The prosecution is directed to produce its witnesses for examination before the concerned Court.

10.09.2025
ps-I

(**RAJESH BHARDWAJ**)
JUDGE

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