

2025:PHHC:134392



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

CRM-M-51553-2025

Date of decision: September 25, 2025

Babbu Singh @ Malkit Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**Present:-** Mr. Sukhdev Singh Khokher, Advocate for the petitioner.

Mr. Baljinder Singh Sra, Additional AG Punjab.

***********SUMEET GOEL, J. (ORAL)**

Present second petition (wrongly mentioned as 3rd petition) has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case bearing FIR No.13 dated 13.02.2024, registered for the offences punishable under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of the NDPS Act added later on), at Police Station Talwandi Sabo, District Bathinda.

2. The gravamen of allegations against the petitioner is that on 13.02.2024, a police patrol party intercepted a truck-trailer bearing registration No.PB-10CW-9535, in which the petitioner was travelling along with co-accused, namely, Sandhura Singh, the registered owner and driver of the vehicle. At the time of interception, both the petitioner and co-accused

were found arranging bags after removing the tarpaulin from the halted truck. Upon conducting a search of the said vehicle, 15 plastic bags were allegedly recovered, each containing 20 kg of poppy husk.

3. Learned counsel for the petitioner has iterated that the petitioner is in custody since 13.02.2024. Learned counsel has further submitted that the mandatory provisions of the NDPS Act have not scrupulously been complied with, and thus, the prosecution case suffers from inherent defects. Learned counsel has iterated that the trial is delayed and the liability thereof cannot be fastened upon the petitioner. Learned counsel has iterated that the petitioner was mere a conductor of the truck in question from which, the alleged contraband has been recovered. Learned counsel further iterated that co-accused, namely, Sadhaura Singh, who was the owner and driver of the said truck, has already been granted concession of regular bail by this Court vide order dated 04.09.2025 passed in ***CRM-M-45198-2025***. Learned counsel has further iterated that the petitioner has suffered incarceration for more than 01½ years. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition by arguing that the allegations raised against the petitioner are serious in nature and, thus, he does not deserve the concession of the regular bail. Learned State counsel has further submitted that the instant bail plea is barred by the rigors of Section 37 of the NDPS Act, and thus, the same ought to be dismissed. Learned State counsel seeks to place on record the custody certificate dated 25.09.2025 in the Court today, 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 13.02.2024 whereinafter investigation was carried out and challan was presented on 16.05.2024. Total 17 prosecution witnesses have been cited, out of which, 05 have been examined and 07 have been given up till date. The rival contentions raised at Bar give rise to debatable issues, which 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.

7. Indubitably, the present petition is the third attempt by the petitioner to secure regular bail.

The first bail plea preferred by the petitioner was dismissed as withdrawn on 29.04.2025. Thereafter, the petitioner applied for interim bail on account of medical exigencies. The said plea, while finding no such case warranting grant of interim bail, was disposed of by the co-ordinate Bench of this Court, reserving liberty in favour of the petitioner to approach this Court again, if the circumstances so warrant, particularly with regard to his health condition after being examined at AIIMS, Bathinda, on 14.07.2025; relevant whereof reads thus:

“Learned State counsel submits that the nature of the petitioner’s ailment does not necessitate constant or regular medical treatment or hospitalization. He further submits that a medical certificate issued by the Medical Officer has been placed on record, indicating that the patient is scheduled to be referred to AIIMS, Bathinda on 15.07.2025.

This Court has also had the occasion to peruse the CT scan report placed on record as Annexure R-3, with the able assistance of Mr. Jasjit Singh Rattu, learned Deputy Advocate General, Punjab. A perusal of the said report clearly indicates that no significant abnormality has been detected which would necessitate urgent medical intervention warranting the grant of interim bail at this stage.

Otherwise also looking into the merits of the case, it is noted that the petitioner is facing prosecution for offences involving drug peddling of a commercial quantity, and is currently in judicial custody undergoing trial. In such circumstances, this Court does not find any justifiable ground to exercise its discretion in favour of the petitioner at this juncture.

However, without commenting further into the merits of the instant petition, the same is disposed of with liberty granted to the petitioner to approach this Court again, if the circumstances so warrant, particularly with regard to his health condition after being examined at AIIMS, Bathinda.

Ordered accordingly.”

7.1. Keeping in view extended incarceration of the petitioner for a period of about 05 months (from the date of withdrawal of first bail plea, i.e., 29.04.2025) and no substantial progress in trial, this Court is inclined to affirmatively 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.”

8. The trial is indeed procrastinating and folly thereof cannot be saddled upon the petitioner. As per custody certificate dated 25.09.2025 filed by the learned State counsel, the petitioner has already suffered incarceration for a period of 01 year, 07 months and 06 days & is not shown to be involved in any other FIR(s). 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.

9. 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."

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

10. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/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 cellphone 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/Illaqa 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 his 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.

11. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/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.

12. Ordered accordingly.

13. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

September 25, 2025

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No