

CRM-M-51746-2025

2025:PHHC:167342



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51746-2025

Kanwaljit Singh

....Petitioner

versus

State of Punjab

....Respondent

Date of decision: December 02, 2025

Date of Uploading: December 03, 2025

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Vipin Mahajan, Senior Advocate with
Ms. Tejinder Kaur, Advocate for the petitioner.

Mr. Baljinder Singh Sra, Additional AG Punjab.

SUMEET GOEL, J. (ORAL)

Present second petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') for grant of regular bail to the petitioner in case bearing FIR No.26 dated 21.03.2025, registered for the offences punishable under Section 111 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and Sections 21, 22, 27(a) & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at Police Station Dera Baba Nanak, Batala, District Gurdaspur.

2. The gravamen of the allegations against the petitioner is that the petitioner is an accused of being involved in an FIR pertaining to NDPS Act,

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involving alleged recovery of 437 intoxicant tablets (Tramadol Hydrochloride), 530 intoxicant capsules Pregabalin, 54 grams of Heroin, ₹3.8 lacs drug money, computerized weighing scale, 02 mobile phones and 01 QR scan code from the petitioner.

3. Learned senior counsel for the petitioner has iterated that the petitioner is in custody since 21.03.2025 and has been falsely implicated into the FIR in question. Learned senior counsel has further iterated that there are material discrepancies in the version of the prosecution regarding the alleged recovery. Learned senior counsel has further submitted that in the FIR, the recovery is stated to be 430 intoxicant tablets whereas DDR No.002 dated 23.03.2025 mentions the recovery as 441 tablets and the order of the trial Court rejecting bail reflects the quantity as 437 tablets. These inconsistencies cast serious doubt on the prosecution story for the purpose of consideration of bail. Learned senior counsel has further argued that the case of the prosecution suffers from inherent infirmities as the mandatory safeguards prescribed under the NDPS Act have not been duly complied with. In this view of the matter, the grant of regular bail is entreated 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, the petitioner does not deserve the concession of the regular bail. Learned State counsel has further submitted that the present case involves a commercial quantity of intoxicant tablets attracting the rigours of Section 37 of the NDPS Act. Learned State counsel seeks to place on record custody certificate dated 01.12.2025 in the Court today, which is taken on record.

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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 21.03.2025, whereinafter, the investigation was carried out and challan has been presented on 19.07.2025. Out of total 10 cited prosecution witnesses, none is stated to have been examined till date. It is, thus, indubitable that conclusion of the trial will take long time. 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.

6.1. As per custody certificate dated 01.12.2025 filed by the learned State counsel, the petitioner has already suffered incarceration for a period of 08 months & 07 days, & is not shown to be involved in any other FIR(s).

6.2. In the factual *milieu* of the case, this Court is of the considered opinion that fetters of Section 37 of the NDPS Act have been met with so as to enlarge the petitioner on bail. It would be apposite to refer a judgment of this Court in *Jaswinder Singh alias Kala versus State of Punjab* passed in *CRM-M-33729-2025 (2025:PHHC:089161)*; the relevant whereof reads thus:

“14. As a sequitur to above-said rumination, the following postulates emerge:

(I) (i) A bail plea on merits; in respect of an FIR under NDPS Act of 1985 involving offence(s) under Section 19 or Section 24 or Section 27-A thereof and for offence(s) involving commercial quantity; is essentially required to meet with the rigour(s) of Section 37 of NDPS Act.

(ii) *The rigour(s) of Section 37 of NDPS Act do not apply to a bail plea(s) on medical ground(s), interim bail on account of any exigency including the reason of demise of a close family relative etc.*

(iii) *The rigour(s) of Section 37 of NDPS Act pale into oblivion when bail is sought for on account of long incarceration in view of Article 21 of the Constitution of India i.e. where the bail-applicant has suffered long under-trial custody, the trial is procrastinating and folly thereof is not attributable to such bail-applicant.*

II. *The twin conditions contained in Section 37(1)(b) of NDPS Act are in addition to the conditions/parameters contained in Cr.P.C./BNSS or any other applicable extant law.*

III. *The twin conditions contained in Section 37(1)(b) of NDPS Act are cumulative in nature and not alternative i.e. both the conditions are required to be satisfied for a bail-plea to be successful.*

IV. *For consideration by bail Court of the condition stipulated in Section 37(1)(b)(i) of NDPS Act i.e. “there are reasonable grounds for believing that he is not guilty of such offence”:*

(i) *The bail Court ought to sift through all relevant material, including case-dairy, exclusively for the limited purpose of adjudicating such bail plea.*

(ii) *Such consideration, concerning the assessment of guilt or innocence, should not mirror the same degree of scrutiny required for an acquittal of the accused at the final adjudication & culmination of trial.*

(iii) *Plea(s) of defence by applicant-accused, if any, including material/documents in support thereof, may be looked into by the bail-Court while adjudicating such bail plea.*

V. *For consideration of the condition stipulated in Section 37(1)(b)(ii) i.e. ‘he is not likely to commit any offence while on bail’:*

(i) *The word ‘likely’ ought to be interpreted as requiring a demonstrable and substantial probability of re-offending by the bail-applicant, rather than a mere theoretical one, as no Court can predict future conduct of the bail-applicant.*

(ii) *The entire factual matrix of a given case including the antecedents of the bail-applicant, role ascribed to him, and the nature of offence are required to be delved into. However, the involvement of bail-applicant in another NDPS/other offence cannot ipso facto result in the conclusion of his propensity for committing offence in the future.*

(iii) *The bail-Court may, at the time of granting bail, impose upon the applicant-accused a condition that he*

would submit, at such regular time period/interval as may stipulated by the Court granting bail, an affidavit before concerned Special Judge of NDPS Court/Illaq (Jurisdictional) Judicial Magistrate/concerned Police Station, to the effect that he has not been involved in commission of any offence after being released on bail. In the facts of a given case, imposition of such condition may be considered to be sufficient for satisfaction of condition enumerated in Section 37(1)(b)(ii).

VI. *There is no gainsaying that the nature, mode and extent of exercise of power by a Court; while satisfying itself regarding the conditions stipulated in Section 37 of NDPS Act; shall depend upon the judicial discretion exercised by such Court in the facts and circumstances of a given case. No exhaustive guidelines can possibly be laid down as to what would constitute parameters for satisfaction of requirement under Section 37 (ibid) as every case has its own unique facts/circumstances. Making such an attempt is nothing but a utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such matter.”*

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.

7. Indubitably, the present petition is the second attempt by the petitioner to secure regular bail. The last plea for bail was dismissed as withdrawn on 18.07.2025. However, keeping in view the entirety of the factual matrix of the case in hand; especially, the factum of the petitioner having suffered extended incarceration and pace of 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.”

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

8. 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.

9. 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.

10. Ordered accordingly.

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

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

(SUMEET GOEL)
JUDGE

December 02, 2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No