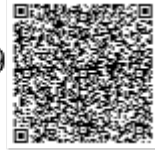


IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2025:PHHC:177199



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CRM-M-52012-2025 (O&M)
Date of decision:22.12.2025

Dharmender

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRAPresent: Mr. R. Krishnaa Morthi, Advocate and
Mr. Purushotam, Advocate for the petitioner.

Ms. Himani Arora, DAG, Haryana.

...

Manisha Batra, J. (Oral).

1. The instant one is the second petition as filed by the petitioner seeking benefit of regular bail in case arising out of FIR No.256, dated 11.06.2023, registered under Sections 21-C and 29 of the NDPS Act, at Police Station Sadar Tauru, District Nuh. His previous petition has been was dismissed as withdrawn vide order dated 23.04.2024.

2. As per the allegations, on 11.06.2023, a secret information was received to the effect that the present petitioner along with the co-accused Sarvan Kumar, Arvind Kumar and Vikas was involved in the business of sale/purchase of contraband and was going to give the same to co-accused Dashrath and they could be apprehended, if raid was conducted. Believing the secret information to be true, a raiding party was formed which reached at the house of the co-accused. He was found holding a plastic bag in his hands and after seeing the police, tried to flee. They were apprehended and

on conducting search of the house, three plastic bags containing 20.630 kgs of *ganja* was recovered from those plastic bags. Apart from that, cash amount of Rs.1 lakh was found kept in the room which too was taken into custody by the police. Petitioner and co-accused were formally arrested. Investigation now stands completed and the petitioner along with the co-accused is facing trial for commission of the aforementioned offences.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. False recovery has been planted upon him. He has been in custody for over a period of 02 years, 06 months and 07 days. His involvement in other cases cannot be considered to be a reason for denying benefit of bail to him. Trial will take considerable time to conclude. His continued detention would not serve any useful purpose. Co-accused Sarvan Kumar and Vikas, whose case is on similar footings, have been extended benefit of bail. On parity, he too deserves to be extended the same benefit.

4. Per contra, learned State counsel, while referring to the contents of the custody certificate has argued that the petitioner is a habitual offender, being involved in several other cases. There are serious allegations against the petitioner. Rigors of 37 of the NDPS Act are attracted in this case. This petition being the second petition, without showing any substantive and new change in the circumstances, is not at all maintainable. There are chances of the petitioner's committing similar offences, if extended benefit of bail. Hence, it is, stressed that the petition does not deserve to be allowed.

5. This Court has heard the rival submissions made by learned counsel for the parties.

6. The petitioner along with co-accused is alleged to have found in conscious possession of the commercial quantity of contraband. The allegations make out a *prima facie* case against him. However, he is in custody for over a period of 02 years, 06 months and 07 days. Trial will obviously take time to conclude as 03 out of 30 witnesses have been examined so far. Co-accused Sarvan Kumar and Vikas, whose case is on similar footings, have been extended benefit of bail. Ever since the withdrawal of his previous petition, a period of more than 01 year and 08 months has expired. Hon'ble Supreme Court in **Rabi Prakash vs. State of Odisha : 2023 Live Law (SC) 533** has held that the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. Similar view has been taken by Hon'ble Supreme Court in **Ankur Chaudhary vs. State of Madhya Pradesh : 2024 (4) RCR (Criminal) 172**. Reliance can also be placed upon **Mohd. Muslim @ Hussain vs. State (NCT of Delhi) : 2023 AIR(SC) 1648** **2023 AIR(SC) 1648**, wherein Hon'ble Supreme Court, while granting concession of regular bail to an accused, from whom commercial quantity of the contraband was allegedly recovered, has held that grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act. Reference can also be made to the authority cited as **Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022(10) SCC 51**, wherein similar observations were made by the Hon'ble Supreme Court. Reliance can also be placed upon the authority cited as

Bhupender Singh vs. Narcotic Control Bureau : (2022) 2 RCR

(Criminal) 706, wherein a Division Bench of this Court, after considering issue with respect to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and the rigors enumerated under Section 37 of the NDPS Act, has held that convict/accused is not precluded from claiming bail invoking parameters of Article 21 of the Constitution of India de-hors the stringent provisions of Section 37 of the NDPS Act. Therefore, keeping in view the aforementioned facts and circumstances, the ratio of law as laid down in the aforecited authorities as well as on parity, this Court is of the considered opinion that no useful purpose would be served by keeping the petitioner in custody anymore and the petitioner has made out a case for release on bail. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing personal as well as surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned. However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found involved in any other subsequent case.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

8. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

22.12.2025

harjeet

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No

(MANISHA BATRA)
JUDGE