



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

CRM-M No.52202 of 2025 (O&M)

Reserved on: 03.11.2025

Pronounced on: 06.11.2025

Mahender Kumar alias Mahender Singh

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present: Mr. Vikas Bishnoi, Advocate for the petitioner.

Ms. Deepali Verma, Asst. A.G. Haryana.

SURYA PARTAP SINGH, J.:

1. For the commission of offence punishable under Section 15(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 318(4) of BNS, hereinafter being referred to as “the NDPS Act” only, the FIR No.0255 dated 04.07.2024, has been lodged in Police Station Agroha, District Hisar. With regard to commission of above mentioned offence, the petitioner has been arrested. He is in custody, and therefore, craving for the concession of bail. This is first petition for bail, filed by the petitioner under Section 483 of BNSS.

2. In nut-shell the facts emerging from record are that on 03.07.2024, ASI Hemraj posted in Narcotic Control Bureau Unit Hisar was present at Adampur road alongwith his team members in official vehicle. According to prosecution, there an informer met the above named ASI and gave a tip-off that Sahdev son of Krishan Kumar had brought drugs from Rajasthan in his



ETIOS car No. RJ-23CF-2546 and that the above-mentioned vehicle was parked by him at Sai Service Station, Agroha.

3. It is the case of the prosecution that while acting upon the above-mentioned information, the above named ASI completed the requisite paper work, and then conducted a raid at Sai Service Station, Agroha, where ETIOS car was found. According to prosecution the owner of above-mentioned service station told that the car was parked there by Sahdev, who was accompanied with his wife and a young daughter. It was also stated by the owner of above-mentioned service station that after parking the car, Sahdev had borrowed his two-wheeler and went to drop his wife and daughter.

4. As per case set-out by the prosecution, thereafter requisite formalities for the search and seizure of car were undertaken by the above named ASI, who called a gazetted officer on the spot and opened the lock of the car and found that in the boot of the car there were 03 black coloured bags. According to prosecution, when the contents of above mentioned bags were checked, it was found to be *poppy powder*. According to prosecution, the weight of above-mentioned contraband was found to be 75.370 kg.

5. The prosecution has further alleged that after recovery of above-mentioned contraband, that was seized in accordance with law, the accused Sahdev was arrested, who on interrogation suffered a disclosure statement, wherein he disclosed that he was transporting contraband of similar kind regularly in the past also, and that he had been selling such drugs to the petitioner also.

6. Heard.



7. It has been argued by learned counsel for the petitioner that the petitioner is innocent having no nexus, whatsoever, with the commission of crime and that he has been falsely roped in the present case on the basis of disclosure statement suffered by his co-accused. It has also been argued by learned counsel for the petitioner that nothing has been recovered from the possession of petitioner, and that he has already suffered incarceration for being in custody for a period of more than 5 ½ months. According to learned counsel for the petitioner the detention of petitioner in judicial lockup is not likely to serve any useful purpose. The learned counsel for the petitioner has urged that in view of above mentioned prevailing circumstances, the petitioner is entitled for the benefit of bail.

8. *Per contra*, the learned State counsel has argued that the petitioner has been nominated by his co-accused, from whose possession commercial quantity of contraband has been recovered. According to learned State counsel since commercial quantity of contraband has been recovered in this case, without satisfying the twin conditions enshrined under Section-37 of NDPS Act, the benefit of bail cannot be claimed by the petitioner.

9. The record has been perused carefully.

10. With regard to given fact-situation, the principles of law have been laid down by the Hon'ble Supreme Court of India in the case of '***Smt. Najmunisha, Abdul Hamid Chandmiya @Ladoo Bapu Vs. State of Gujarat, Narcotics Control Bureau***', 2014 INSC 290, wherein the Hon'ble Supreme Court of India has ruled that confessional statement recorded under Section- 67



of NDPS Act cannot be considered to be admissible in trial, as confessional statement against the accused.

11. It is also relevant to mention here that the situation, similar to the present case, cropped-up in *Special Leave to Appeal (Crl.) No.1266/2023*, titled as '*Vijay Singh Vs. The State of Haryana*'. In the abovementioned case, the petitioner was not present on the spot at the time of recovery and he was implicated solely on the basis of statement of co-accused. The Hon'ble Supreme Court of India in the abovementioned case afforded the benefit of bail to the accused.

12. Similarly, in the case of '*Surender Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence*' 2018(3) RCR (Criminal) 954, it has been held by the Hon'ble Supreme Court of India that the disclosure statement of co-accused is inadmissible against another accused, as the disclosure statement is not a substantive piece of evidence against the other accused person.

13. Similar principle has been laid down by the Hon'ble Supreme Court of India in the case of '*Preet Kamal Vs. State of Punjab*', 2018(4) RCR (Criminal) 938, wherein it has been held that the disclosure statement of an accused can be used only against the person making the same and not against the co-accused.

14. In '*Tofan Singh Vs. State of Tamil Nadu*', 2021(4) SCC 1 also, it has been observed by the Hon'ble Supreme Court of India that confessional statement of accused recorded under Section 67 of NDPS Act cannot be admitted in evidence, as a confession.



15. It is also relevant to mention here that from the possession of co-accused of the petitioner, commercial quantity of contraband has been recovered and that is why, the learned Special Judge has observed that rigors of Section 37 of NDPS Act are applicable in the present case also. However, in this regard, the law propounded by the Hon'ble Supreme Court of India in the case of '*Mohd. Muslim @Hussain Vs. State (NCT of Delhi)*, 2023 AIR SC 1648, is relevant, wherein the Hon'ble Supreme Court of India has ruled that principles of fairness embodied under Article 21 of the Constitution override the statutory restrictions on grant of bail under Section 37 of NDPS Act.

16. The record has been perused carefully.

17. A perusal of record shows that in the present case, there are certain relevant factors, which are required to be taken into consideration for arriving at any decision with regard to instant petition. Those factors are:-

- (a) that the petitioner has already suffered a long incarceration for being in custody for a period of more than 07 months;
- (b) that nothing is left to be recovered from the possession of petitioner;
- (c) that the petitioner has been nominated on the basis of disclosure statement of co-accused, namely Sahdev, and the above-mentioned disclosure statement was suffered by the co-accused when he was in the custody of police. Thus, there is a question mark with regard to admissibility of such disclosure statement in evidence;
- (d) that the benefit of regular bail has already been accorded to the co-accused standing on the same footing, in CRM-M-48080-2025;



- (e) that detention of petitioner in judicial lock up is not likely to serve any purpose; and
- (f) that there is nothing on record to show that if released on bail the petitioner is likely to tamper with the evidence, or influence the witnesses.

18. If the cumulative effect of all the above mentioned factors is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail.

19. Accordingly, without commenting anything on the merits of the case, the present petition is hereby allowed and the petitioner is admitted to bail subject to his furnishing bail bonds to the satisfaction of learned trial Court. It is further clarified that on the day when petitioner applies for furnishing the bail bonds, if the learned trial Court is not available, the learned Sessions Judge shall be at liberty to assign the case, for the abovesaid purpose, to any other Court.

(SURYA PARTAP SINGH)
JUDGE

06.11.2025
Kapil

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