

CRM-M-54222-2025

2025:PHHC:159601



218

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-54222-2025

Malook Singh

....Petitioner

versus

State of Punjab

....Respondent

Date of decision: November 18, 2025
Date of Uploading: November 18, 2025

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Karanjit Singh, Advocate for the petitioner.

Mr. Jaypreet Singh, DAG Punjab.

SUMEET GOEL, J. (ORAL)

Present 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.143 dated 10.12.2023, registered for the offences punishable under Sections 21-C, 27-A, 29, 61 & 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’), at Police Station D Division, Amritsar.

2. The gravamen of the allegations against the petitioner is that he is an accused of being involved in an FIR pertaining to NDPS Act involving 3 kg of Heroin allegedly recovered from the co-accused of the petitioner, namely, Rashpal Singh, and said co-accused nominated the present

CRM-M-54222-2025

petitioner, in his disclosure. The petitioner on the basis of his own disclosure, allegedly got recovered 420 grams of Heroin.

3. Learned counsel for the petitioner has iterated that the petitioner is in custody since 13.12.2023. Learned counsel has further argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has argued that mandatory provisions of the NDPS Act have not scrupulously been complied with, and thus, the prosecution case suffers from inherent defects. Learned counsel has further iterated that assuming *arguando*, the prosecution version is taken to be correct, prime prosecution evidence available against the petitioner is in the shape of disclosure statement of co-accused, namely, Rashpal Singh. Learned counsel has further iterated that the petitioner has suffered incarceration for more than 01 year. Thus, regular bail is prayed for.

4. Learned State counsel seeks to place on record custody certificate dated 17.11.2025 as also short reply by way of an affidavit dated 11.11.2025 of Jaspal Singh, PPS, Assistant Commissioner of Police, Central, Amritsar, in the Court today, which are taken on record. Raising submission in tandem with the said short reply, 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 instant bail plea is barred by the rigors of Section 37 of the NDPS Act, and thus, the same ought to be dismissed.

5. I have heard counsel for the rival parties and have gone through the available records of the case.

CRM-M-54222-2025

6. The petitioner was arrested on 13.12.2023, whereinafter, investigation was carried out and the challan *qua* the petitioner has been presented on 10.04.2024. Total 23 prosecution witnesses have been cited, out of which, 02 have been examined in part and 01 has been given up till date. The petitioner has been implicated as an accused in the FIR in question solely on the basis of disclosure statement of co-accused, namely, Rashpal Singh. As per the prosecution version, there is no other material available to connect the petitioner with the contraband except for the said disclosure statement. It is pertinent to note that such disclosure statements, in the absence of corroborative evidence hold limited evidentiary value and cannot be sole basis for implicating the petitioner. The reliance on this unsubstantiated statement raises serious doubts about the fairness and objectivity of the investigation. It is not in dispute that the petitioner was not present at the spot. The veracity and weightage required to be attached to the disclosure statement made by the co-accused will be fully tested at the time of trial. 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. At this juncture, it would be apposite to refer to a judgment passed by this Court in *Anshul Sardana versus State of Punjab*, passed in **CRM-M-65094-2024** (2025: PHHC:004198), wherein, after relying upon the *ratio decidendi* of the judgments of the Hon'ble Supreme Court in Tofan

CRM-M-54222-2025

Singh versus State of Tamil Nadu, AIR 2020 Supreme Court 5592; Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu versus State of Gujrat, Narcotics Control Bureau, 2024 INSC 290; State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.', 2022 (1) RCR (Criminal) 762; and Vijay Singh vs. The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s) 1266/2023, decided on 17.05.2023, has held thus:

“6.3 It is a well established principle of law that a confession made by a co-accused under Section 67 of the NDPS Act is inherently a very weak piece of evidence. Such statement(s), by themselves, cannot form the sole basis for the conviction of an individual and must be scrutinized with utmost caution in conjunction with other substantive evidence. Moreover, no recovery has been effected from the possession of the petitioner, who has been subsequently implicated as an accused solely on the basis of disclosure statement of the co-accused. However, as regular bail pertains to life and liberty of individual, Courts are obligated to strike a balance between safeguarding personal liberty and ensuring the effective administration of justice as also investigation. The final evidentiary value and admissibility of the disclosure statement made by a co-accused fall within the domain of the trial Court and are to be adjudicated during the course of the trial in accordance with established principles of law. However, while adjudicating a plea for regular bail, this Court cannot remain oblivious to the circumstances under which the petitioner has been arraigned or implicated, including the nature of the allegations, the evidence linking the petitioner to the offence as well as the specific role attributed to the petitioner in the commission of the alleged offence. A prima facie examination of these factors is essential to ensure that the process of law is not misused, abused or misdirected.”

6.2. Further, this Court in the case of ***Jaswinder Singh alias Kala versus State of Punjab*** passed in ***CRM-M-33729-2025 (2025:PHHC:089161)*** has held 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

CRM-M-54222-2025

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.”*

6.3. In this view of the matter, the rigor imposed under Section 37 of the NDPS Act stands diluted.

6.4. As per custody certificate dated 17.11.2025 filed by the learned State counsel, the petitioner has already suffered incarceration for a period of 01 year, 10 months and 30 days, & is not shown to be involved in any other FIR(s).

7. 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

CRM-M-54222-2025

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.

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.

CRM-M-54222-2025

- (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.

CRM-M-54222-2025

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

November 18, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No