

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****216****CRM-M-57866-2025 (O&M)****Date of decision : 28.11.2025**

Anil Swain @Chandan

..... Petitioner

VERSUS

Union Territory, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present : Mr. Vivek Kathuria, Advocate for the petitioner.

Mr. Manish Bansal, Public Prosecutor, for the respondent.

SURYA PARTAP SINGH, J. (oral)

1. For the commission of offence punishable under Sections 20 and 29 of 'Narcotic Drugs and Psychotropic Substances Act', hereinafter being referred to as 'NDPS Act', the FIR No.6 dated 13.04.2024 has been lodged in Police Station ANTF, Chandigarh. The petitioner is being prosecuted for the commission of abovementioned offence and he has been arrested. The petitioner is in custody and, therefore, craving for bail. This is second petition, filed by the petitioner, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. In nut-shell, the facts emerging from record are that the FIR of this case came into being on the report of SI Neeraj Kumar. It was reported by the above-named police officer that on 13.04.2024, when he was heading a police party deputed for patrolling duty on the bridge near Garcha light point, he spotted a person carrying a bag. According to above-named police

officer, when on the basis of suspicion, the abovementioned person was intercepted and the contents of bag were checked, it was found that in the abovementioned bag, he was carrying 20.342 kg of *ganja* (cannabis).

3. It is the case of the prosecution that on recovery of abovementioned contraband, necessary formalities with regard to seizure & sealing of contraband, lodging of FIR, and arrest of the accused were performed, and further investigation taken up.

4. Heard.

5. It has been contended on behalf of petitioner that the recovery of abovementioned contraband from the possession of petitioner is just little above the minimum limit prescribed for commercial quantity, i.e. 20.342 kg, against the limit of 20 kg. As per learned counsel for the petitioner, the petitioner has clean antecedents, and that he has already faced incarceration for a period of more than 01 year and 07 months. The learned counsel for the petitioner has also contended that the trial is taking place at a very slow pace, as out of 30 prosecution witnesses, only one has been examined so far. While claiming that due to delay in trial the petitioner is entitled to move second petition for bail, it has been argued that the petitioner is entitled for bail also.

6. *Per contra*, the learned State Counsel has argued that from the date of dismissal of former bail petition of the petitioner, no significant change in circumstances has taken place. As per learned State counsel since the quantity of contraband recovered from the possession of petitioner comes within the ambit of commercial quantity, without satisfying the twin

conditions enshrined under Section-37 of NDPS Act, the benefit of bail cannot be afforded to the petitioner.

7. In support of his arguments, the learned State counsel has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of *The State (NCT of Delhi) Narcotics Control Bureau v. Lokesh Chadha, (2021) 5 SCC 724*, wherein it has been held that no person accused for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

8. The record has been perused carefully.

9. As far as the principles governing the benefit of bail in a case related to NDPS Act, are concerned, the principles of law laid down by the Hon'ble Supreme Court in the case of '*Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352*' are relevant, wherein the Hon'ble Supreme Court has held that grant of bail on account of undue delay in trial cannot be said to be fettered under Section 37 of the NDPS Act, given the imperative of Section 436-A which is applicable to offences under the Act.

10. In this regard it is also relevant to mention here that the Hon'ble Supreme Court of India in the case of *Manmandal and Another v. State of West Bengal, Special Leave Petition (Criminal) No.8656 of 2023 decided on 14.09.2023* and *Rabdi Prakash v. State of Odisha, 2023 SCC Online SC 110*, extended the benefit of bail to the accused, who had been incarcerated

for a period of almost 2-3 years and the trial was likely to take considerable time. The above-mentioned benefit has been given by observing that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article-21 of the Constitution, and in such a situation, the constitutional principles must override the statutory embargo contained under Section-37 of the NDPS Act.

11. In addition to above, in a recently pronounced verdict in the case of *Santosh Pawar Vs. State of Chhattishgarh & Anr.*’ *Criminal Appeal No.4883/2025*, the Hon’ble Supreme Court observed that rigours of Section 37 of NDPS Act will not be a bar for considering the case of an accused for bail as it comes with a condition that the prosecution would press for an early completion of trial. In the above-mentioned case the Hon’ble Supreme Court of India held that appellant who was being prosecuted for being in possession of commercial quantity of narcotic substance, was entitled for bail in view of her incarceration for a period of 19 months.

12. Similarly in another case i.e. in the case of *Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 SCC 51* prolonged incarceration and inordinate delay engaged the attention of the Hon’ble Supreme Court of India, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply.

13. In the case of *Ismail Khan @ Pathan vs. State of Rajasthan Criminal Appeal No.4911 of 2025* with regard to recovery of commercial quantity of narcotic substance the Hon'ble Supreme Court of India accorded the benefit of bail to the accused in view of prolonged incarceration for a period of 02 years and 08 months of the accused.

14. The similar benefit has been taken in another appeal i.e. *SLP No.15699-2025 titled as Ebrahim @ Ibrahim SK vs. The State of West Bengal* and in the case of *Pamesh Arora vs. UT Chandigarh Criminal Appeal No.4872 of 2025*.

15. If the facts and circumstances of the present case are analyzed in the light of above-mentioned principles of law, it transpires that:-

- (i) that the petitioner has already suffered prolonged incarceration for a period of more than 01 year and 07 months;
- (ii) that the trial is not likely to be concluded in near future;
- (iii) that nothing is left to be recovered from the possession of petitioner;
- (iv) that detention of petitioner in judicial lock up is not likely to serve any purpose;
- (v) that there is nothing on record to show that if released on bail, the petitioner may tamper with the evidence or influence the witnesses;
- (vi) that there is nothing on record to show that if released on bail, the petitioner will not co-operate/participate in the trial; and

(vii) that although this is second petition in this Court, but the same is maintainable as the first petition was not decided on merits, and otherwise also from the date of dismissal of former bail petition no significant progress in trial has taken place. The prolonged incarceration without speedy trial provides a cause for filing second petition to the petitioner.

16. In the present case, the principles of law laid down by the Hon'ble Supreme Court in the case of "***Dataram versus State of Uttar Pradesh and another***", 2018(2) R.C.R. (Criminal) 131, are also relevant, wherein it has been observed that "*a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying*

bail to an accused person is the right thing to do on the facts and in the circumstances of a case”.

17. Recently, in the case of ***‘Tapas Kumar Palit Vs. State of Chhattisgarh’***, 2022 INSC 222, the Hon’ble Supreme Court of India has observed that *“if an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed”*. It has also been observed by the Hon’ble Supreme Court of India in the abovementioned case that *“delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently”*.

18. Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as mandated by Hon’ble Apex court in ***“Balwinder Singh versus State of Punjab and Another”***, SLP (Crl.) No.8523/2024.

19. If the cumulative effect of all the abovementioned factors, involved in the instant case, is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail, and that the present petition deserves to be allowed.

20. Accordingly, without commenting anything on the merits of the case, the present petition is hereby ***allowed***. The petitioner is hereby ordered

to be released on bail on his furnishing personal bond and surety bond(s) to the satisfaction of learned trial Court, subject to the following conditions:-

- (i) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.
- (ii) that the petitioner shall at the time of execution of bond, furnish the address to the Court concerned and shall notify the change in address to the trial Court, till the final decision of the trial; and
- (iii) that the petitioner shall not leave India without prior permission of the trial Court.

21. In case, the petitioner violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

(SURYA PARTAP SINGH)
JUDGE

NOVEMBER 28, 2025
Gaurav Thakur

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No