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

**CRM-M-63640-2024 (O&M)
Date of decision : 24.02.2025**

Tikam Ram

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Navkiran Singh, Advocate, for the petitioner.

Mr. Neeraj Sheoran, DAG, Haryana.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS'), for grant of bail pending trial to the petitioner in FIR No.447 dated 03.06.2024, under Sections 20(b) (ii)(c) and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station City Karnal, District Karnal.

2. Status report filed by way of affidavit dated 22.02.2025 of Manoj Kumar, HPS, Deputy Superintendent of Police, Gharaunda, Karnal, on behalf of respondent-State, is taken on record. Copy thereof supplied to the opposite side.

Registry to do the needful.

3. Allegations are that petitioner sold approximately 3 KGs of Charas to co-accused - Kanta Rani and on her disclosure, petitioner was arrested.



4. Contends that petitioner is in custody since 07.06.2024; after investigation, report under Section 173 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was submitted on 21.11.2024; charges were framed on 10.01.2025; and out of 17 prosecution witnesses, none has been examined so far.

4.1 Also contends that petitioner was granted interim bail by this Court on 07.01.2025 and he is regularly appearing before learned Special Court.

4.2 Again contends that there is no apprehension that petitioner is likely to influence the prosecution witnesses or hamper the trial, in any manner.

4.3 Lastly contended that no recovery of alleged contraband was effected from the petitioner and he is not involved in any other criminal case.

5. *Per contra*, learned State counsel, on instructions from quarter concerned, has acknowledged the above factual position; but opposes the prayer on the premise that commercial quantity of contraband was recovered from co-accused and as such, bar under Section 37 of NDPS Act, would apply.

6. Heard learned counsel for both the sides and perused the paper book.

7. It is a matter of record that petitioner was granted interim bail by this Court on 07.01.2025 and the order reads as under:-

“Contends that petitioner was not named in the FIR; rather nominated on the basis of disclosure made by co-accused, namely,



Kanta Rani on 05.06.2024. Also contends that there is no other case pending against the petitioner under the NDPS Act.

Learned State counsel seeks time to verify the above factual position.

Posted for 24.02.2025.

In the meanwhile, petitioner be released on interim bail in the present case till the next date of hearing on furnishing adequate bail and surety bonds subject to the satisfaction of learned Special Court/CJM/Duty Magistrate concerned.”

8. It is not in dispute that petitioner remained in custody from 07.06.2024 to 07.01.2025; report under Section 173 Cr.P.C. was submitted on 21.11.2024, but charges are framed on 10.01.2025; and out of 17 prosecution witnesses, none has been examined so far. Learned State counsel is also not able to controvert that after granting interim bail vide order dated 07.01.2025, petitioner is regularly appearing before learned Special Court and never misused the concession in any manner.

9. Also acknowledged by both sides that there is no other criminal case pending against the petitioner. Although recovery against the co-accused is alleged to be commercial in nature, but concededly, no contraband was recovered from the petitioner. Therefore, it would be debatable during trial as to whether petitioner was in any way connected with the recovery of alleged contraband. Be that as it may, at this stage, it is very difficult to comprehend that petitioner was in conscious possession of the alleged contraband.



10. Thus, in such a scenario, there is no hesitation to record the “Twin Test” satisfaction in favour of the petitioner as per Section 37(1)(ii) of the NDPS Act in the following manner:-

(i) *Prima facie*, there is no material to indicate that petitioner was found in conscious possession of the alleged contraband; hence, being a debatable question, shall be decided during trial and in such a scenario, it is very difficult to say that petitioner is guilty of the alleged offence.

(ii) After registration of the FIR in question, petitioner has not been involved in any case under the NDPS Act.

11. Needless to say that above “Twin Test” satisfaction has been recorded only for the purpose of bail application and same be not treated as an opinion on pending trial.

12. It is also not in dispute that petitioner remained in custody for about 7 months; report under Section 173 of Cr.P.C. was submitted on 21.11.2024; charges were framed on 10.01.2025 and out of 17 witnesses, none has been examined so far; thus conclusion of trial is likely to take sufficient long time.

13. Consequently, present petition is allowed. Interim order dated 07.01.2024 is made absolute. Petitioner shall be admitted to bail on his furnishing bail/surety bonds to the satisfaction of learned Special Court/Chief Judicial Magistrate/Duty Magistrate concerned.

14. Petitioner shall appear on each and every date of hearing and to fully co-operate with learned Special Court without seeking any unnecessary adjournment(s).

15. The above observations may not be construed as an expression of opinion on the merits of the case.



16. It is clarified that in case of recurrence or any misuse of concession of bail on the part of the petitioner, State of Haryana would be at liberty to move an appropriate application for recalling of this order.

Pending application(s), if any, shall also stand disposed off.

24.02.2025
d.gulati

(MAHABIR SINGH SINDHU)
JUDGE

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