

2025:PHHC:167010



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

254

**CRM-M No.66145 of 2025
Date of decision: 01.12.2025**

Javed

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Kamlesh, Advocate,
for the petitioner.

Mr. Vivek Sharma, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The petitioner is seeking indulgence of this Court by filing the present petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (For short "BNSS") for grant of regular bail in case arising out of FIR No.174 dated 26.11.2023 registered under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station City-1, Malerkotla, District Malerkotla, on the allegations that on 26.11.2023, he along with the co-accused Anwar

2025:PHHC:167010



Khan and Sanam Khan was apprehended by a police party and recovery of 2.560 kgs. of opium and drug money of Rs.16,000/- was effected from a bag which they were carrying at that time. The recovered contraband and money was taken into custody by the police. The petitioner and co-accused were formally arrested and now they are facing trial for commission of aforementioned offences. One of the petitions previously filed by the petitioner had been dismissed as withdrawn on 19.10.2024 whereas the second petition was dismissed on 25.07.2025.

2. It is argued by learned counsel for the petitioner that the co-accused Anwar Khan has since been extended benefit of bail. On parity, he too deserves to be extended the same benefit. More so, there is no likelihood of conclusion of the trial since only two witnesses has been partly examined so far. In view of substantial delay and on parity, he is entitled to be extended benefit of bail. It is, accordingly, urged that the petition deserves to be allowed.

3. Notice of motion.

4. Mr. Vivek Sharma, AAG, Punjab has advance notice of the petition and is ready to argue the matter. He has placed on record custody certificate and has argued that keeping in view the gravity of the allegations as levelled against the petitioner, he does not deserve to be extended benefit of bail.

5. This Court has considered the rival submissions.

2025:PHHC:167010



6. The petitioner along with the co-accused was found to be in possession of commercial quantity of opium and drug money to the tune of Rs.16,000/-. He is in custody since 26.11.2023 i.e. for a period of more than two years. The co-accused whose case is on similar footing has been extended benefit of bail. Only 02 prosecution witnesses have been partly examined so far out of total 21 witnesses, despite the fact that challan was presented way back 18.05.2024. The petitioner has been in long incarceration. The trial is obviously delayed and there is no likelihood of the same to conclude in near future. 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

2025:PHHC:167010



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. In the present case, apparently and evidently, the trial is substantially delayed. Therefore, keeping in view the aforementioned facts and circumstances and also the ratio of law as laid down in the aforecited authorities, this Court is of the considered opinion that no useful purpose would be served by keeping the petitioner in custody any more. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing personal/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

2025:PHHC:167010



for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

01.12.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No