



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(226)

CRM-M-2830-2026
DATE OF DECISION: 28.04.2026

Balwinder Singh @ Binder

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM HON'BLE MR. JUSTICE SUBHAS MEHLA

Present Mr. Shailesh Aggarwal, Advocate,
with Mr. Yash Garg, Advocate, for the petitioner.
Mr. Sandeep Kumar, DAG, Punjab.

SUBHAS MEHLA, J (ORAL)

1. Present petition has been filed under Section 483 of BNSS seeking grant of concession of **regular bail**, to the petitioner in case FIR No.80 dated 20.08.2025, under Section 21(C)/61/85 of NDPS Act, registered at Police Station Bariwala, District Shri Muktsar Sahib.

2. As per the allegations of present FIR, on 20.08.2025, recovery of 255 gms including weight of polythene of Heroin has been effected from the possession of the present petitioner, which falls within the purview of “commercial quantity”.

3. Learned counsel for the petitioner contends that the contraband recovered is marginally above the **non** commercial quantity which also includes the weight of polythene, and if weight of contraband is considered, it comes to non commercial quantity; that the petitioner has been falsely implicated in the present case having clean and clear antecedents; that he is not required for any purpose as he is in judicial custody since 20.08.2025; that nothing has been recovered from him; that he has no connection with



the other accused persons; that the petitioner possesses sufficient material to disprove the allegations levelled by the prosecution and to establish his innocence; that trial will take sufficient time to conclude; that no fruitful purpose would be served by keeping the petitioner behind the bar; that the petitioner undertakes to abide by all the terms and conditions that may be imposed by this Court and, therefore, prays that he be released on regular bail. In support of his contentions, learned counsel for the petitioner has relied upon copies of orders passed by Co-ordinate Benches of this Court, passed in **CRM-M-46244-2022**, titled **Pardeep Singh versus State of Punjab**, decided on 19.01.2023, **CRM-M-17021-2021**, titled **Gurpreet Kumar versus State of Punjab**, decided on 31.08.2021, **CRM-M-42436-2020**, titled **Salim versus State of Haryana**, decided on 24.02.2021, **CRM-M-3055-2021**, titled **Gagandeep versus State of Punjab**, decided on 27.01.2021 and **CRM-M-41029-2019**, titled **Gurpreet Singh @ Gopi versus State of Punjab**, decided on 26.02.2020.

4. In pursuance of advance notice, Mr. Sandeep Kumar, DAG, Punjab appears and files custody certificate of the petitioner, same is taken on record. Learned State counsel vehemently opposes the grant of regular bail to the petitioner, on the ground that, since the recovered contraband i.e 255 gms of Heroin falls within the category of “commercial quantity”, therefore, in view of the statutory bar engrafted in Section 37 of the N.D.P.S. Act, the petitioner does not deserve the concession of bail, however, learned counsel fairly admits that the contraband recovered is marginally above the commercial quantity and also include the weight of polythene and the petitioner has clear antecedents as not involved in any other case and is a first



time offender.

5. Heard.

6. Although it is not in dispute that the recovered contraband, i.e., 255 gms of Heroin, is marginally above the commercial quantity including weight of polythene, thereby attracting the rigor of Section 37 of the N.D.P.S. Act, it is equally well settled that a prolonged period of incarceration may dilute the rigours of said provision. Gainful reference in this regard can be made to “**Rabi Prakash Versus The State of Odisha**”, **Special Leave to Appeal (Criminal) No.4169 of 2023**, wherein, the Hon’ble Supreme Court has discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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.”

7. Keeping in view the facts and circumstances of the present case and the contentions raised by learned counsel for the parties, as concession of bail cannot be denied just as measure of punishment as culpability of the



accused will be decided at the final stage by the trial Court after appreciating the evidences adduced by both sides and it is a trite principle of criminal jurisprudence that bail is rule, jail is an exception, this Court deems it a fit case to grant the concession of regular bail to the petitioner, this Court deems it a fit case to grant the concession of regular bail to the petitioner on the following aspects:

- i. The contraband recovered i.e 255 gms of Heroin, which include weight of polythene is marginally above the 'commercial quantity';
- ii. The petitioner is first time offender and having clean and clear antecedents as he is not involved in any other case;
- iii. There is no direct evidence to prove the complicity of the petitioner in the present matter;
- iv. Witnesses are police officials and there is no apprehension to tamper with prosecution witnesses after release of the petitioner;
- v. Trial will take sufficient time to conclude;
- vi. No fruitful purpose would be served by keeping the petitioner in custody for any further period;

8. Therefore, without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

28.04.2026
mamta

(SUBHAS MEHLA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No