



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

(217)

CRM-M-5689-2025(O&M)
DATE OF DECISION: 12.01.2026

Sanjay Kumar @ Sanjay Baniya

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM HON'BLE MR. JUSTICE SUBHAS MEHLA

Present Mr.Amit Choudhary, Advocate, for the petitioner.
Mr. Ramender Singh Chauhan, Asstt. AG, Haryana.

SUBHAS MEHLA, J (ORAL)

1. Present petition has been filed under Section 439 of the Cr.P.C., seeking grant of concession of regular bail, to the petitioner in case FIR No.485 dated 27.11.2023, under Section 20(C) and 27-A of NDPS Act, 1985 and Section 201 IPC, registered at Police Station Bhuna, District Fatehabad.

2. Briefly stated facts of the prosecution case are that on 27.11.2023, a police party headed by SI Kapil Dev, on the basis of secret information, raided shop of accused/petitioner, situated in village Gorkhpur and during search, recovery of 01 kg 400 gms. of Charas, wrapped in a transparent plastic pouch was effected from the counter of aforesaid shop, in the presence of Sanjay Kumar, DSP, Bhuna.

3. Learned counsel for the petitioner submits that the petitioner is in custody since 27.11.2023 i.e for more than two years, charges were framed on 05.01.2026 and out of 18, only three prosecution witnesses have been examined but now the co-accused has been arrested and the case is fixed for re-framing of charges and it is submitted that trial will take



sufficient time to conclude; the alleged recovered contraband is just marginally higher to the non commercial quantity; as per custody certificate, no other case of similar nature i.e NDPS is pending against the petitioner, therefore, prayer for grant of regular bail to the petitioner is made.

4. On the other hand, Custody certificate on behalf of petitioner filed by learned State counsel in Court today is taken on record. Learned State counsel opposed the bail application by submitting that petitioner is in custody since 27.11.2023 i.e for a period of two years, one month and twelve days and since the recovered contraband falls within the category of “commercial quantity”, 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.

5. He has also filed a custody certificate *qua* the petitioner today in court, which is taken on record. A perusal thereof reveals that the petitioner has suffered incarceration of two years, one month and twelve days as on 10.01.2026.

6. Heard.

7. Although, it is not under dispute that the alleged recovered contraband falls within the ambit of “**commercial quantity**”, thus attracting the rigor of Section 37 of the N.D.P.S. Act, however, it is also not under dispute that sufficient period of incarceration dilutes the stringent conditions of Section 37 of the N.D.P.S. Act. 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



“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.”

8. Therefore, be that as it may, considering the fact that as per the custody certificate, the petitioner has suffered incarceration of two years, one month and twelve days as on 10.01.2026 and the trial will take sufficient time to conclude as the case is fixed for re-framing of charge as co-accused has been arrested, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of his bail bonds and surety bonds to the satisfaction of concerned trial Court/Duty Magistrate, subject to condition that if any FIR is registered of the same nature against the petitioner, then the prosecution would be at liberty to appear before the trial Court for cancellation of bail and the trial Court will deal with that application in accordance with law.

9. Pending application(s), if any, also stand disposed of accordingly.

12.01.2026
mamta

(SUBHAS MEHLA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No