



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(219)

CRM-M-6024-2025(O&M)
DATE OF DECISION: 27.01.2026

Dhira

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM HON'BLE MR. JUSTICE SUBHAS MEHLA

Present Mr.Hitesh Chopra, Advocate, for the petitioner.
Mr. Sandeep Kumar, DAG, Punjab.

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.131 dated 26.08.2024, under Section 22 of the Narcotic Drugs and Psychotropic Substance Act, 1985, registered at P.S. Mukerian Tehsil and District Hoshiarpur (Annexure P-1).
2. Briefly stated, recovery of 90 loose tablets of Etizolam from the polythene envelop thrown by the petitioner which was placed in his right pocket has constituted the bedrock for registration of the present FIR.
3. Learned counsel for the petitioner contended that petitioner is having clean and clear antecedents; he is falsely implicated in this case; as per the allegations 90 tablets of etizolam has been recovered from him; he is in custody since 26.08.2024; charges have been framed in this case on 23.10.2024 i.e one year and three months ago and out of eight prosecution witnesses, only three witnesses have been examined, trial will take sufficient time to conclude; no useful purpose would be served and there is no



apprehension that after release he will tamper with the prosecution evidence as witnesses are police officials.

4. On the other hand, Mr. Sandeep Kumar, DAG, Punjab, learned State counsel vehemently opposed the grant of regular bail to the petitioner, on the ground that, since the recovered contraband 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.

5. Custody certificate on behalf of petitioner filed by learned State counsel in Court today is taken on record. A perusal thereof reveals that the petitioner has suffered incarceration of one year, four months and twenty seven days, as on 24.01.2026.

6. Heard.

7. Although, it is not under dispute that the 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 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

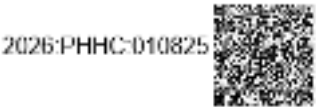


that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

8. Keeping in view the facts and circumstances of the case that the present petitioner is in custody from last more than one year; he is a first time offender having clear antecedents; charges were framed way back on 23.10.2024; out of eight prosecution witnesses, two have been examined, one given up and five remain to be examined and next date of hearing before the learned trial Court is fixed for 02.03.2026; trial is likely to take sufficient time to conclude; there is no apprehension that after release, petitioner will tamper with the prosecution evidence, concession of bail cannot be denied to the petitioner and speedy trial is the right of the accused.

9. Taking into consideration the quantity of the contraband recovered; custody period and the antecedents of the present petitioner, he is ordered to be released on bail on furnishing of his bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate, subject to condition that his presence can be secured during the trial and it is directed that if any FIR under NDPS Act is registered against the petitioner, prosecution would be at liberty to move an application for cancellation of his bail and trial Court would be at liberty to decide the application in accordance with law.

10. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in



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

27.01.2026
mamta

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(SUBHAS MEHLA)
JUDGE