

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

2026 PHHC 033254



(135)

CRM-M-6610-2026
Decided on :05.03.2026
Uploaded on :05.03.2026

Mahesh Kumar

.....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM : HON'BLE MR.JUSTICE SUMEET GOEL

Present:- Mr. Rakesh Kumar Lathwal, Advocate for the petitioner.

Ms. Mahima Yashpal Singla, Senior DAG, Haryana.

SUMEET GOEL, JUDGE

1. Present petition is the second attempt, which has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in FIR No.161 dated 14.05.2025 registered for offences punishable under Sections 20(b)(ii)(C) of the NDPS Act, 1985 (Section 29 of NDPS Act added later on) and Section 61(2) and 238 of BNS 2023 at Police Station Sadar Nuh, District Nuh.

2. The gravamen of the allegations against the petitioner is that he is an accused of being involved in an FIR pertaining to NDPS Act involving 443.3 kg of Ganja, allegedly recovered from the co-accused Ram Kishan and the petitioner is involved on the basis of disclosure statement of other co-accused namely Rajkumar @ Rajbir @ Bagri.

3. Learned counsel for the petitioner has iterated that the petitioner is in custody since 11.08.2025. Learned counsel for the petitioner has further submitted that the mandatory provisions of the NDPS Act have not been complied with, and thus, the prosecution case suffers from inherent defects. Learned counsel has further iterated that sole basis to array the petitioner as an accused is the disclosure statement of co-accused. Learned counsel has further iterated that the petitioner has suffered incarceration for more than 6 months. Thus, regular bail is prayed for.

4. Learned State counsel has filed reply/status report by way of affidavit of Deputy Superintendent of Police, Special Task Force, Headquarter, Gurugram in Court today, which is taken on record. Relevant part of the said status report reads thus:

“16. That the role of the petitioner Mahesh Kumar in the present case is that he along with other accused used to procure ganja from Odisha and Andhra Pradesh and sell the same in Haryana and Rajasthan. The petitioner had also purchased the vehicle no. HR-61-A-6595 in the name of accused Vijay Sharma. The petitioner used to procure ganja through accused Manish. In the present case, the petitioner and other accused had procured ganja worth Rs. 13.5 Lakhs out of which the share of the petitioner was Rs. 3.5 Lakhs. On 14.05.2025, their driver Ram Kishan was bringing the ganja in vehicle no. HR-61-A-6595 and the same was caught by the police near village Devla Nangli near Ujina at Mumbai Vadodara Express Way, Nuh. The petitioner has been named by accused Rajkumar @ Rajbir @ Bagri in his amended disclosure statement which is attached herewith as Annexure R-3.”

Learned State counsel has, thus, opposed the present petition by raising arguments in tandem with the said reply/status report that the allegations raised against the petitioner are serious in nature and, thus, he does not deserve the concession of the regular bail. Learned State counsel has further submitted

that the instant bail plea is barred by the rigors of Section 37 of the NDPS Act, and thus, the same ought to be dismissed. Learned State counsel seeks to place on record custody certificate dated 03.03.2026 in Court, which is taken on record.

5. I have heard counsel for the rival parties and have gone through the available records of the case.

6. Before delving further into the merits of the case in hand, it would be profitable to refer herein to a judgment passed by this Court in the case titled as ***Ashu Vs. State of Punjab(CRM-M-54032-2024)***, which reads as under:

“7. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ‘Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592’, relevant whereof reads as under:

"155. We answer the reference by stating: (i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act (ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS ACL"

More recently, the Hon'ble Supreme Court in a judgment titled as ‘Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu Vs. State of Gujrat, Narcotics Control Bureau’ 2024 INSC 290’, has reiterated the ratio decidendi of the judgment of Hon’ble Supreme Court in the case of Tofan Singh (supra).

7.1 Further, the Hon’ble Supreme Court; while dealing with a plea for bail in a case under NDPS Act, 1985; in a judgment titled as ‘State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.’, 2022(1) RCR (Criminal) 762, has held as under:

“9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner- NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A1 and A2

in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

10 It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arresis made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 177374/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."

7.2 Still further, the Hon'ble Supreme Court; while dealing with a plea for grant of anticipatory bail in a case under NDPS Act, 1985; in a judgment titled as 'Vijay Singh vs. The State of Haryana, bearing Special CRM-M-54032-2024 (O&M) Leave to Appeal (Crl.) No.(s) 1266/2023 decided on 17.05.2023', has held as under:

"The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act". His application for anticipatory bail was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there

is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail.

Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose.

The petition is allowed.

All pending applications are disposed of."

7.3 It is a well established principle of law that at the incipient stage of investigation, when the investigation is still ongoing, the Court must restraint and refrain from undertaking a meticulous examination of evidence collected thus far. The process of investigation is dynamic, and evidence may evolve or be corroborated, as the investigation progresses. However, as anticipatory bail pertains to life and liberty of individual, courts are obligated to strike a balance between safeguarding personal liberty and ensuring the effective administration of justice as also investigation.

The final evidentiary value and admissibility of the disclosure statement made by a co-accused fall within the domain of the trial Court and are to be adjudicated during the course of the trial in accordance with established principles of law. However, while adjudicating a plea for anticipatory bail, this court cannot remain oblivious to the circumstances under which the petitioner has been arraigned or implicated, including the nature of the allegations, the evidence linking the petitioner to the offence as well as the specific role attributed to the petitioner in the commission of the alleged offence. A prima facie examination of these factors is essential to ensure that the process of law is not misused, abused or misdirected."

6.1. Further, this Court in the case of **Jaswinder Singh alias Kala versus State of Punjab** passed in **CRM-M-33729-2025 (2025:PHHC:089161)** has held thus:

"14. As a sequitur to above-said rumination, the following postulates emerge:

- (I) (i) A bail plea on merits; in respect of an FIR under NDPS Act of 1985 involving offence(s) under Section 19 or Section 24 or Section 27-A thereof and for offence(s) involving commercial quantity; is essentially required to meet with the rigour(s) of Section 37 of NDPS Act.*

- (ii) *The rigour(s) of Section 37 of NDPS Act do not apply to a bail plea(s) on medical ground(s), interim bail on account of any exigency including the reason of demise of a close family relative etc.*
- (iii) *The rigour(s) of Section 37 of NDPS Act pale into oblivion when bail is sought for on account of long incarceration in view of Article 21 of the Constitution of India i.e. where the bail-applicant has suffered long under-trial custody, the trial is procrastinating and folly thereof is not attributable to such bail-applicant.*
- II. *The twin conditions contained in Section 37(1)(b) of NDPS Act are in addition to the conditions/parameters contained in Cr.P.C./BNSS or any other applicable extant law.*
- III. *The twin conditions contained in Section 37(1)(b) of NDPS Act are cumulative in nature and not alternative i.e. both the conditions are required to be satisfied for a bail-plea to be successful.*
- IV. *For consideration by bail Court of the condition stipulated in Section 37(1)(b)(i) of NDPS Act i.e. “there are reasonable grounds for believing that he is not guilty of such offence”:*
- (i) *The bail Court ought to sift through all relevant material, including case-dairy, exclusively for the limited purpose of adjudicating such bail plea.*
- (ii) *Such consideration, concerning the assessment of guilt or innocence, should not mirror the same degree of scrutiny required for an acquittal of the accused at the final adjudication & culmination of trial.*
- (iii) *Plea(s) of defence by applicant-accused, if any, including material/documents in support thereof, may be looked into by the bail-Court while adjudicating such bail plea.*
- V. *For consideration of the condition stipulated in Section 37(1)(b)(ii) i.e. ‘he is not likely to commit any offence while on bail’:*
- (i) *The word ‘likely’ ought to be interpreted as requiring a demonstrable and substantial probability of re-offending by the bail-applicant, rather than a mere theoretical one, as no Court can predict future conduct of the bail-applicant.*
- (ii) *The entire factual matrix of a given case including the antecedents of the bail-applicant, role ascribed to him, and the nature of offence are required to be delved into. However, the involvement of bail-applicant in another NDPS/other offence cannot ipso facto result in the conclusion of his propensity for committing offence in the future.*
- (iii) *The bail-Court may, at the time of granting bail, impose upon the applicant-accused a condition that he would submit, at such regular time period/interval as may stipulated by the Court granting bail, an affidavit before concerned Special Judge of NDPS Court/Illaqa (Jurisdictional) Judicial Magistrate/concerned Police Station, to the effect that he has not been involved in commission of any offence after being released on bail. In the facts of a given case, imposition of such condition may be considered to be sufficient for satisfaction of condition enumerated in Section 37(1)(b)(ii).*

VI. There is no gainsaying that the nature, mode and extent of exercise of power by a Court; while satisfying itself regarding the conditions stipulated in Section 37 of NDPS Act; shall depend upon the judicial discretion exercised by such Court in the facts and circumstances of a given case. No exhaustive guidelines can possibly be laid down as to what would constitute parameters for satisfaction of requirement under Section 37 (ibid) as every case has its own unique facts/circumstances. Making such an attempt is nothing but a utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such matter.”

6.2. In this view of the matter, the rigor imposed under Section 37 of the NDPS Act stands diluted.

6.3. Reverting to the facts of the case in hand; the petitioner was arrested on 11.08.2025 and challan was presented on 22.01.2026. The petitioner has been implicated as an accused in the FIR in question solely on the basis of disclosure statement of co-accused Rajkumar @ Rajbir @ Bagri. As per the prosecution version, there is no other material available to connect the petitioner with the contraband except for the said disclosure statement. It is pertinent to note that such disclosure statements, in the absence of corroborative evidence hold limited evidentiary value and cannot be sole basis for implicating the petitioner. The reliance on this unsubstantiated statement raises serious doubts about the fairness and objectivity of the investigation. It is not in dispute that the petitioner was not present at the spot. The veracity and weightage required to be attached to the disclosure statement made by the co-accused will be fully tested at the time of trial. The rival contentions raised at Bar give rise to debatable issues shall be ratiocinated upon during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

6.4. Indubitably, the present petition is the second attempt on behalf of the petitioner for securing regular bail. The first one bearing no. CRM-M-2095-2026 was dismissed as withdrawn on 21.01.2026 (Annexure P-2). However, keeping in view the entirety of facts and circumstance of the case in hand especially keeping in view the extended custody and pace of trial, this Court is inclined to favourably consider the instant plea for bail. A profitable reference, in this regard, can be made to a judgment of this Court passed in **CRA-S-2332-2023** titled as **Rafiq Khan versus State of Haryana and another**; relevant whereof reads as under:

“10. As an epilogue to the above discussion, the following principles emerge:

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

7. As per the custody certificate filed today by the learned State counsel, the petitioner has suffered incarceration for a period of 6 months and 20 days & is not shown to be involved in any other FIR/case.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

8. In view of above, the present petition is **allowed**. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/Duty Magistrate, the petitioner shall remain bound by the following conditions:

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.
- (viii) The petitioner shall submit, on the first working day of every month, an affidavit, before the concerned trial Court, to the effect that he has not been involved in commission of any offence after being released on bail. In case the petitioner is found to be involved in any offence after his being enlarged on bail in the present FIR, on the basis of his affidavit or otherwise, the State is mandated to move, forthwith, for cancellation of his bail which plea, but of course, shall be ratiocinated upon merits thereof.

9. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

10. Ordered accordingly.

11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

March 05, 2026

Naveen

(SUMEET GOEL)

JUDGE

Whether speaking/reasoned :

Whether Reportable :

Yes/No

Yes/No