



CRM-M-17549-2026 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****232****CRM-M-17549-2026 (O&M)****Date of decision : 08.04.2026**

Avinash @Avinash Kumar

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present : Mr. Satnam Singh, Advocate for the petitioner.

Mr. Rohit Bansal, Sr. DAG Punjab.

SURYA PARTAP SINGH, J.

This petition for bail is the third petition, filed by the petitioner under Section 483 of 'the Bharatiya Nagarik Suraksha Sanhita, 2023'. It has been filed with regard to a case arising out of FIR No.0004 dated 02.01.2025, for the commission of offence punishable under Sections 21(C), 27 and 29 of Narcotic Drugs and Psychotropic Substances Act, hereinafter being referred to as 'NDPS Act', Police Station City Malout, District Sri Muktsar Sahib.

2. The abovementioned FIR came into being at the instance of 'ASI Shawinder Singh', who reported that on 02.01.2025, when he was leading a team of police officials, deputed for patrolling duty, near the main gate of cotton market four persons riding on two-wheelers were spotted. According to above-named police officer, the abovesaid persons when noticed the presence of police party tried to escape and in view of

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abovementioned suspicious behaviour, they were apprehended who disclosed their names as 'Savtaj Bhatti', 'Jashan', 'Gaurav Kumar' and 'Avinash' (the petitioner herein). It has further been alleged by the prosecution that while complying with the necessary provisions enshrined under NDPS Act, the search of person of abovesaid persons were undertaken and from their possession, 260 grams of 'heroin' kept in a transparent packet was recovered.

3. It is the case of the prosecution that pursuant to recovery of abovementioned contraband, necessary formalities with regard to seizure & sealing of contraband, lodging of FIR, and formal arrest of the accused were completed, and further investigation taken up.

4. **Notice of motion.**

5. Mr. Rohit Bansal, Sr. DAG Punjab appears on behalf of respondent-State. Hence service of notice upon the State is hereby dispensed with. The learned State Counsel has filed custody certificate of the petitioner. The same be taken on record. No formal reply has been filed by the State. However, the learned State Counsel has orally opposed the present petition.

6. Heard.

7. It has been contended by learned counsel for the petitioner that this is third petition for bail filed by the petitioner, and that the second petition for bail was dismissed on 28.01.2026. According to learned counsel for the petitioner, from the date of dismissal of second bail petition, change



in relevant circumstances has taken place, as the similarly placed co-accused, namely Gaurav Kumar, has been accorded the benefit of bail by the Coordinate Bench of this Court on 11.03.2026. While claiming parity, the learned counsel for the petitioner has sought for the benefit of bail for the petitioner.

8. The learned State Counsel has controverted the above-mentioned arguments. According to learned State Counsel, since the quantity of contraband recovered in this case comes within the ambit of 'commercial quantity', unless the twin conditions enshrined under Section-37 of NDPS Act are satisfied, the benefit of bail should not be accorded to the petitioner.

9. The record has been perused carefully.

10. Since the recovery of contraband in the case in hand comes within the ambit of commercial quantity, the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Mohd. Muslim @ Hussain v. State' (NCT of Delhi), 2023 SCC OnLine SC 352 are relevant. In the abovementioned case, the Hon'ble Supreme Court of India has held that grant of bail on account of undue delay in trial cannot be said to be fettered under Section-37 of the NDPS Act, given the imperative of Section 436-A which is applicable to offences under the Act.

11. In this regard it is also relevant to mention here that the Hon'ble Supreme Court of India in the case of 'Manmandal and Another v. State of West Bengal', Special Leave Petition (Criminal) No.8656 of 2023 decided on 14.09.2023 and 'Rabi Prakash v. State of Odisha', 2023 SCC Online SC



1109, extended the benefit of bail to the accused, who had been incarcerated for a period of almost 2-3 years and the trial was likely to take considerable time. The above-mentioned benefit has been given by observing that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article-21 of the Constitution, and in such a situation, the constitutional principles must override the statutory embargo contained under Section-37 of the NDPS Act.

12. In addition to above, in a recently pronounced verdict in the case of ‘Santosh Pawar Vs. State of Chhattishgarh & Anr.’ Criminal Appeal No.4883/2025, the Hon’ble Supreme Court of India observed that rigors of Section 37 of NDPS Act will not be a bar for considering the case of an accused for bail as it comes with a condition that the prosecution would press for an early completion of trial. In the above-mentioned case the Hon’ble Supreme Court of India held that appellant who was being prosecuted for being in possession of commercial quantity of narcotic substance, was entitled for bail in view of her incarceration for a period of 19 months.

13. Similarly in another case i.e. in the case of ‘Satender Kumar Antil v. Central Bureau of Investigation’ (2022) 10 SCC 51 prolonged incarceration and inordinate delay engaged the attention of the Hon’ble Supreme Court of India, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The Hon’ble Supreme Court of India expressed the opinion that Section 436A of the Criminal Procedure Code, 1973 [which requires inter alia the accused to



be enlarged on bail if the trial is not concluded within specified periods] would apply in such cases.

14. In the case of 'Ismail Khan @ Pathan vs. State of Rajasthan' Criminal Appeal No.4911 of 2025 with regard to recovery of commercial quantity of narcotic substance the Hon'ble Supreme Court of India accorded the benefit of bail to the accused in view of prolonged incarceration for a period of 02 years and 08 months of the accused.

15. The similar benefit has been given in another appeal, i.e. SLP No.15699-2025 titled as 'Ebrahim @ Ibrahim SK vs. The State of West Bengal', and in the case of 'Pamesh Arora vs. UT Chandigarh' Criminal Appeal No.4872 of 2025.

16. In the case of 'Hasanujjaman & Ors. V/s The State of West Bengal' SLP (Crl.) No.3221 of 2023, the benefit of bail has been accorded by the Hon'ble Supreme Court of India to an accused, who was found in the possession of 115 bottles of phensedyl, by observing that:-

- a) the petitioner was in custody for a period of one year and three months;
- b) the investigation in that case was complete and charge-sheet had been filed, but charges were yet to be framed;
- c) the conclusion of trial would take some time; and
- d) the petitioner had no criminal antecedents.

In view of abovementioned prevailing factors, it has been observed by the Hon'ble Supreme Court of India that there is substantial compliance of Section-37 of NDPS Act.



17. Similarly, in the case of ‘Nandlal Mondal @Abhay Mondal V/s The State of West Bengal’ SLP(Crl) No.12788/2023, the Hon’ble Supreme Court of India afforded the benefit of bail to the accused, who was found in possession of 10,000 ml of codeine phosphate, and was in custody for a period of one and a half year, by considering that conclusion of trial would take long time.

18. If the facts and circumstances of the present case are analyzed in the light of above-mentioned principles of law, it transpires that:-

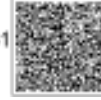
- i. that the petitioner has already faced incarceration for a period of more than one year and three months;
- ii. that after the dismissal of second bail petition, the similarly placed co-accused, namely Gaurav Kumar, has already been accorded the benefit of bail by the coordinate bench. Hence a right has accrued to the petitioner to file this third petition;
- iii. that nothing has been left to be recovered from the possession of petitioner;
- iv. that the trial is not likely to be concluded in near future;
- v. that the detention of petitioner in judicial lock up is not likely to serve any purpose;
- vi. that there is nothing on record to show that if released on bail, the petitioner may tamper with the evidence or influence the witnesses; and
- vii. that there is nothing on record to show that if released on bail, the petitioner will not co-operate/participate in the trial.

19. In the present case, the principles of law laid down by the Hon’ble Supreme Court of India in the case of “Dataram versus State of



Uttar Pradesh and another”, 2018(2) R.C.R. (Criminal) 131, are relevant, wherein it has been observed that “a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case”.

20. The principles laid down by the Hon’ble the Supreme Court of India in the case of ‘Satender Kumar Antil Vs. Central Bureau of Investigation and Another’, (2022) 10 SCC 51, are also relevant in this case. In the abovementioned case, it has been observed that “the rate of conviction



in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice”.

21. Recently, in the case of ‘Tapas Kumar Palit Vs. State of Chhattisgarh’, 2025 SCC Online SC 322, the Hon’ble Supreme Court of India has observed that “if an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed”. It has also been observed by the Hon’ble Supreme Court of India in the abovementioned case that “delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently”.

22. To elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as mandated



by Hon’ble Apex court in “Balwinder Singh versus State of Punjab and Another”, 2024 SCC Online SC 4354.

23. If the cumulative effect of all the abovementioned factors, involved in the instant case, is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail, and that the present petition deserves to be allowed.

24. Accordingly, without commenting anything on the merits of the case, the present petition is hereby *allowed*. The petitioner is hereby ordered to be released on bail on furnishing personal bond and surety bond(s) to the satisfaction of learned trial Court. However the abovementioned concession shall be subject to following conditions:-

- (i) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority;
- (ii) that the petitioner shall at the time of execution of bond, furnish the address to the Court concerned and shall notify the change in address to the trial Court, till the final decision of the trial; and
- (iii) that the petitioner shall not leave India without prior permission of the trial Court.

(SURYA PARTAP SINGH)
JUDGE

08.04.2026
Gaurav Thakur

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No