



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

107

**CRM-M No.23771 of 2025 (O&M)
Decided on: 26.02.2026**

Shakib Ali

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Ms. Sushma Chaudhary, Advocate for the petitioner.
(through hybrid mode).

Mr. Ramender Singh Chauhan, AAG, Haryana.

SURYA PARTAP SINGH, J. (Oral):

This is first petition for bail, filed by the petitioner under Section 483 of the 'Bharatiya Nagarik Suraksha Sanhita 2023'. This petition has been filed with regard to a case arising out of FIR No.868 dated 14.11.2024, for the commission of offence punishable under Sections 21-C, 61, 85 of Narcotic Drugs & Psychotropic Substances Act, 1985, Police Station Sector-58, Faridabad.

2. Briefly stating the facts emerging from record are that the FIR of this case came into being at the instance of 'ASI Amit Kumar', who reported that on 14.11.2024 when he was leading a team of police officials a reliable source gave him a tip-off that 'Shakib Ali' (petitioner herein) was involved in the activities of selling of drug. According to above named police officer in view of above mentioned information firstly the information was sent to the police station and senior police officers, and thereafter, as per information the



accused-petitioner was identified and when search of his person was conducted, from his possession 1Kg and 10 grams of 'Smack heroin' was recovered.

3. It is the case of the prosecution that on recovery of above mentioned contraband requisite formalities with regard to seizure and sealing of contraband, slapping of FIR and formal arrest of the petitioner were performed and further investigation was taken up.

4. The learned State Counsel has filed custody certificate of the petitioner. The same be taken on record.

5. Heard.

6. At the threshold, it has been contented by learned counsel for the petitioner that the petitioner has already suffered a prolonged incarceration for being in custody for a period of more than one year and three months, and that the arrest of the petitioner in itself is illegal as before arresting the grounds of arrest were not served upon the petitioner. In this regard the learned counsel for the petitioner has referred to the arrest memo which is silent with regard to serving of grounds of arrest upon the petitioner.

7. In addition to above, the leaned counsel for the petitioner has also contented that the petitioner has clean antecedents and that the trial is taking place at a slow pace, and the same is not likely to be concluded in near future.

8. Per contra, the learned State counsel has argued that the petitioner has been arrested in a case for an offence under NDPS Act and NDPS Act being a special statute, the general provision with regard to service of grounds of arrest upon the petitioner are not applicable. According to learned State



counsel since the recovery of contraband from the possession of petitioner comes within the ambit of commercial quantity, unless the twin conditions enshrined under Section 37 of NDPS Act are complied with the petitioner should not be enlarged on bail.

9. In addition to above the learned State counsel has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of The State (NCT of Delhi) Narcotics Control Bureau v. Lokesh Chadha, (2021) 5 SCC 724, wherein it has been held that no person accused for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

10. The record has been perused carefully.

11. Since in the present case the recovery of contraband comes within the ambit of commercial quantity it shall be appropriate to look into the relevant principles of law with regard to grant of bail in the cases wherein the recovery of contraband comes within the ambit of commercial quantity of drugs.

12. Dealing with a situation similar to the present case in the case of 'Mohd. Muslim @ Hussain v. State' (NCT of Delhi), 2023 SCC OnLine SC 352, the Hon'ble Supreme Court 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.



13. 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.

14. 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.

15. 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.

16. 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.

17. The similar benefit has been taken 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.

18. 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 above mentioned 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.

19. Similarly, in the case of 'Nandlal Mondal @Abhay Mondal V/s The State of West Bengal' SLP(CrI) 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.

20. 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 is already in custody for a period of more than one year and three months;
- ii) that the petitioner has no criminal antecedents;
- iii) that there is question mark with regard to legality of arrest of petitioner as there is nothing on record to show that the grounds of arrest were served upon the petitioner. The above mentioned lapse is in violation of the principles of law propounded by the Hon'ble Supreme Court in the case of 'Vihaan Kumar Vs. The State of Haryana and anr. AIR 2025 Supreme Court 1388';
- iv) that the investigation in this case is already complete, and therefore, nothing has been left to be recovered from the possession of petitioner;



- v) that the trial of this case is not likely to be concluded in near future;
- vi) that the detention of petitioner in judicial lock-up is not likely to serve any purpose;
- vii) that there is nothing on record to show that if released on bail, the petitioner may tamper with the evidence or influence the witnesses;
- viii) that there is nothing on record to show that if released on bail, the petitioner will not co-operate/participate in the trial.

21. 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) 3 SCC 22, 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”.

22. The principles laid down by the Hon’ble the Supreme Court of India in the case of ‘Satender Kumar Antil v. Central Bureau of Investigation’ (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”.

23. 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”.

24. 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 an undertrial prisoner, as mandated by Hon’ble Apex court in ‘Balwinder Singh versus State of Punjab and another’ 2024 SCC Online SC 4354.

25. Taking into consideration the cumulative effect of all the aforesaid factors, it is hereby held that the petitioner is entitled for the concession of bail, and that the present petition deserves to be allowed.

26. 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 abovesaid benefit 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 from disclosing 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 trial Court.

(SURYA PARTAP SINGH)
JUDGE

26.02.2026
Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No