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

CRM-M-23867-2026

Date of decision :05.05.2026

Harnek Masih**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Ms. Diksha Mahajan, Advocate
for the petitioner.

Mr. Raj Karan Singh, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)**CRM-18616-2026**

Application is allowed as prayed for.

Main case

1. Present petition has been filed praying for the grant of regular bail to the petitioner in case bearing FIR No.70 dated 18.12.2024, under Sections 21(c), 27(a), 61 and 85 of the NDPS Act, registered at Police Station Tibber, District Gurdaspur.

2. Succinctly, the facts of the present case are that the police party, while on patrolling on 18.12.2024, saw an Activa Scooter which was being driven by a girl and a boy was sitting pillion. On seeing the police party, they got perplexed and tried to run away. After parking the scooty on the side of road, the girl threw a black colour polythene bag, which she was holding. The police on suspicion, surrounded them and both were apprehended. On asking, the girl disclosed her name to be Liya and the boy who was riding pillion disclosed his name to be Ajay Sharma.

They were suspected to be carrying some contraband and thus, search of



the polythene being thrown by girl was carried out. On conducting the search of the girl, 257 grams of heroin was recovered. On conducting the search of Ajay Sharma an amount of Rs.3500/- was recovered. They failed to produce any license regarding possession of the same. Thus, the FIR got registered. After registration of FIR, investigation commenced. During investigation, the complicity of the petitioner, namely, Harnek Masih @ Neki surfaced on the basis of disclosure statement of co-accused, hence, he was arrayed as accused and was arrested on 25.02.2025. On completion of the investigation, the challan was presented and on framing of charges, trial commenced. Petitioner has approached the learned Judge Special Court, Gurdaspur for grant of bail. However, after hearing both the sides and finding no merit in the same, the learned Judge Special Court, Gurdaspur declined the bail application vide order dated 27.03.2026. Being aggrieved, petitioner is before this Court by way of filing the present petition praying for the grant of bail.

3. Learned counsel for the petitioner, at the outset, prays for the grant of bail on the basis of parity with that of co-accused, namely, Jaswant Singh. She has drawn the attention of this Court to the common order dated 13.01.2026 passed by this Court in CRM-M-59760-2025 whereby co-accused of the petitioner, namely, Jaswant Singh has been granted the concession of regular bail. She has submitted that case of the petitioner is at par with the co-accused, who has been granted bail by this Court. She has further submitted that on the basis of the parity, the petitioner deserves to be granted bail. She has also submitted that the petitioner is behind the bars from last more than 01 year.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. However, he has endorsed



the fact that case of the petitioner is at par with co-accused, namely, Jaswant Singh, who has already been granted bail by this Court. He has submitted that recovery of 257 grams of Heroin was effected from co-accused, which falls under the category of commercial quantity and thus, provisions of Section 37 of the NDPS Act are attracted in the present case. On instructions, he has submitted that challan has been filed, charges have been framed and out of 17 prosecution witnesses, none has been examined till date. He has produced custody certificate of petitioner, today in the Court, which is taken on record.

5. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260**, this Court is of the opinion that the case of the petitioner is covered by the ratio laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

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21it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

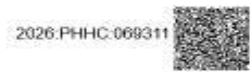


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23. *There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.’*

6. After hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioner is behind bars since the date of his arrest. The custody certificate produced would show that petitioner has suffered incarceration of 01 year, 02 months and 07 days as on 04.05.2026. It further reflects that the petitioner is involved in 03 more cases. Admittedly, co-accused of the petitioner, namely, Jaswant Singh has already been granted bail by this Court vide common order dated 13.01.2026.

7. The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail on the basis of parity with co-accused, Jaswant Singh who has already been granted regular bail by this Court vide common order dated 13.01.2026 passed in CRM-M-59760-2025. Accordingly, the present



petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

8. If the petitioner does not furnish the bail bonds within seven days from today, then his further custody period after one week will not be counted in the present case.

05.05.2026
m.sharma

(RAJESH BHARDWAJ)
JUDGE

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