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

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Date of decision: 08.05.2026**

DILBAG SINGH ALIAS BAGHA

..PETITIONER

VS.

STATE OF PUNJAB

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUBHAS MEHLA

Present: Ms. Kusum Raj, Advocate
for Mr. A.D.S. Jattana, Advocate for the petitioner.

SUBHAS MEHLA, J. (Oral)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 seeking grant of regular bail in case bearing FIR No.0080 dated 20.08.2025, registered under Sections 21C/61/85 NDPS Act at Police Station Bariwala, District Shri Muktsar Sahib.

2. As per the allegations of present FIR, on 20.08.2025, recovery of 255 gms including weight of polythene of Heroin has been effected from

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the possession of the present petitioner, which falls within the purview of “commercial quantity”.

3. Learned counsel for the petitioner contends that the case of the petitioner is similarly situated to the case of co-accused Balwinder Singh @ Binder who has been granted concession of regular bail by this Court vide order dated 28.04.2026 passed in CRM-M-2830-2026. He further contends that contraband recovered is marginally above commercial quantity including the weight of polythene, and if weight of contraband is considered, it comes to non commercial quantity; that the petitioner has been falsely implicated in the present case; he is having clean and clear antecedents; that he is not required for any purpose as he is in judicial custody since 20.08.2025; that nothing has been recovered from him; that he has no connection with other accused persons; that the petitioner possesses sufficient material to disprove the allegations levelled by the prosecution and to establish his innocence; that trial will take sufficient time to conclude; that no fruitful purpose would be served by keeping the petitioner behind the bar; that the petitioner undertakes to abide by all the terms and conditions that may be imposed by this Court and, therefore, prays that he be released on regular bail.

4. In pursuance of advance notice, Mr. D.S. Malwai, Addl. AG, Punjab appears and vehemently opposes the grant of regular bail to the petitioner, on the ground that the recovered contraband i.e 255 gms of Heroin falls within the category of “commercial quantity”.

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However, learned counsel fairly admits that the contraband recovered includes the weight of polythene and the petitioner has clear antecedents as not involved in any other case.

5. Heard.

6. Although it is not in dispute that the recovered contraband, i.e., 255 gms of Heroin, is marginally above the commercial quantity including weight of polythene, thereby attracting the rigor of Section 37 of the N.D.P.S. Act, it is equally well settled that a prolonged period of incarceration may dilute the rigours of said provision. 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



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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.”

7. Keeping in view the facts and circumstances of the present case and the rival contentions raised by learned counsel for the parties, this Court deems it a fit case to grant the concession of regular bail to the petitioner on the following aspects:

i. The alleged contraband recovered i.e 255 gms of Heroin, which includes the weight of polythene, is marginally above the ‘commercial quantity’;

ii. case of the petitioner is on similar footing to that of co-accused namely, Balwinder Singh @ Binder who has already been granted concession of regular bail vide order dated 28.04.2026 in CRM-M-2830-2026.

iii The petitioner is having clean and clear antecedents as he is not involved in any other case;

iv. Trial will take sufficient time to conclude and no fruitful purpose would be served by keeping the petitioner in custody for any further period;

8. As concession of bail cannot be denied just as measure of punishment as culpability of the accused will be decided at the final stage by

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the trial Court after appreciating the evidences adduced by both sides and it is a trite principle of criminal jurisprudence that bail is rule, jail is an exception, this Court deems it a fit case to grant the concession of regular bail to the petitioner,

9. Therefore, without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

May, 08,2026
Poonam Sharma

(SUBHAS MEHLA)
JUDGE

Whether Speaking/Reasoned: YES/NO

Whether Reportable: YES/NO