



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

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**CRM-M No.30051 of 2026
Date of decision : 29.5.2026
Date of uploading : 29.5.2026**

Ashwani Kumar**.....Petitioner****Versus****State of Punjab****.....Respondent****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Ms. Chandanpreet Kaur Ahluwalia, Advocate, for the petitioner

Mr. Baljinder Singh Sra, Addl. AG, Punjab

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.128 dated 11.11.2023 under Sections 15(c) and 27(a) of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Dhariwal, District Gurdaspur.
2. The gravamen of the FIR in question is that the petitioner is an accused of being involved in FIR pertaining to NDPS Act involving 100 Kgs. of poppy husk allegedly recovered from the mini truck bearing registration No.PB-13-AR-7287, being driven by the petitioner, whereas co-accused Karnail Chand alias Gori (owner of the said mini truck) was seated on the conductor side and Ajay Kumar was also seated in the said truck.



3. Learned counsel for the petitioner has argued that the petitioner is in custody since 11.11.2023. Learned counsel has further urged that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further urged that the petitioner is in custody for the last more than 2 years and 6 months. Learned counsel has further argued that the petitioner was only driving the mini truck in question and co-accused Karnail Chand @ Gogi, who was sitting on conductor seat, is the registered owner of the said mini truck. Learned counsel has further submitted that the said co-accused Karnail Chand @ Gogi has already been granted the concession of regular bail by this Court vide order dated 10.11.2025 passed in CRM-M No.31704 of 2024. Learned counsel has further argued that mandatory provision of NDPS Act has not been complied with and therefore, the prosecution case suffers from inherent defects. Learned counsel has further urged that all prosecution witnesses stand examined and thus, the petitioner is not in a position to influence the prosecution witnesses/trial. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition by arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 28.5.2026 in Court, which is taken on record.

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

6. The petitioner was arrested on 11.11.2023 wherein after



investigation was carried out; challan was prepared on 8.5.2024 and subsequently filed. It is not in dispute before this Court that co-accused Karnail Chand @ Gogi, owner of the mini truck in question, has already been granted the concession of regular bail by this Court vide order dated 10.11.2025. It is not in dispute that all prosecution witnesses stand examined and the case is fixed for defence evidence. The very premise for the continued incarceration of the petitioner is significantly attenuated. The apprehension of the petitioner influencing or tampering with the prosecution witnesses, a common ground for denial of bail, is rendered largely moot in such circumstances. As the venerable legal maxim goes '*Cessante ratione legis, cessat ipsa lex*'- when the reason for the law ceases, the law itself ceases-duly encapsulates within its ambit, the factual milieu of the instant case. The primary rationale for pre-trial detention, securing the integrity of the prosecution's case and ensuring the accused's presence at trial, is substantially diminished when the evidentiary phase of the prosecution is virtually complete. Furthermore, it is a cardinal principle of criminal jurisprudence that the right to a fair trial is paramount, an indispensable facet of which is the accused's opportunity to present a robust defense. Although the right to lead defence by an accused is regulated by Section 233 of Cr.P.C, *nonetheless*, it is one of the most valuable rights. A criminal trial is not a one-sided affair, it embodies the adversarial system where both the prosecution and the defense must be afforded an equal, if not greater, opportunity to substantiate their respective cases. To effectively exercise this inalienable right to lead



defense evidence, the physical liberty of the accused is often an essential factor. A person confined to custody faces considerable impediments in consulting with legal counsel, gathering defense witnesses, and preparing their strategy. Denial of liberty at this advanced stage, when the prosecution's evidentiary edifice is almost complete, can severely cripple the defense, thereby striking at the very root of a fair trial. *Audi alteram partem* -hear the other side- is a fundamental dictate of natural justice, and denying bail when there's no palpable risk of witness tampering would be to render this maxim nugatory. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in '**Gudikanti Narasimhulu and others versus Public Prosecutor, High Court of Andhra Pradesh**', 1978 AIR (SC) 429, relevant part thereof reads as under:

"11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted."

The rival contentions raised at Bar give rise to debatable issues which 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.

6.1 As per custody certificate dated 28.5.2026 filed by the learned State counsel, the petitioner has already suffered incarceration for a period



of 2 years, 6 months and 15 days.

6.2. This Court in a judgment titled as *Kulwinder versus State of Punjab* passed in **CRM-M-64074-2024** (2025:PHHC:002695); after relying upon the *ratio decidendi* of the judgments of the Hon'ble Supreme Court in Hussainara Khatoon vs. Home Secy., State of Bihar (1980) 1 SCC 81; Abdul Rehman Antulay vs R.S. Nayak (1992) 1 SCC 225; Javed Gulam Nabi Shaikh vs. State of Maharashtra and another, 2024(3) RCR (Criminal) 494; Mohd Muslim @ Hussain vs. State (NCT of Delhi) reported as 2023 INSC 311; Criminal Appeal No.245/2020 dated 07.02.2020 titled as "Chitta Biswas Alias Subhas vs. The State of West Bengal"; "Nitish Adhikary @ Bapan vs. The State of West Bengal", Special Leave to Appeal (Crl.) No.5530-2022 dated 22.08.2022 titled as "Mohammad Salman Hanif Shaikh vs. The State of Gujarat"; Criminal Appeal No.1169 of 2022 dated 05.08.2022 titled as Gopal Krishna Patra @ Gopalrusma vs. Union of India, and Ankur Chaudhary vs. State of Madhya Pradesh, 2024(4) RCR (Criminal) 172; has held, thus:

"7.8. The right to a speedy and expeditious trial is not only a vital safeguard to prevent undue and oppressive incarceration; to mitigate anxiety and concern accompanying the accusation as well as to curtail any impairment in the ability of an accused to defend himself, but there is an overarching societal interest paving way for a speedy trial. This right has been repeatedly actuated in the recent past and the ratio decidendi of the above-referred to Supreme Court's judgments have laid down a series of decisions opening up new vistas of fundamental rights. The concept of speedy trial is amalgamated into the Article 21 as an essential part of the fundamental right to life and liberty, guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed at the time of the arrest of the accused and consequent incarceration which continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result due to impermissible and avoidable delay since the time of the commission of the offence till the criminal proceedings consummate into a finality, could be averted. The speedy trial, early hearing and quick disposal are sine qua non of criminal jurisprudence. The overcrowded Court-



dockets, the heavy volume of work and the resultant pressure on the prosecution and the Police, indubitably keeps the entire criminal jurisprudential mechanism under stress and strain. However, this cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. It does not serve any credit to the criminal justice system, rather it makes for a sad state of affairs. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the Court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend himself. It goes without saying that the consequences of pre-trial detention are grave. Accused, presumed innocent, till proven otherwise, are subjected to psychological and physical deprivations of jail-life, usually under onerous conditions. Equally important, the burden of detention of such an accused frequently falls heavily on the innocent members of his family.

There is yet another aspect of the matter which deserves consideration at this stage. The allegations in the present case relate to accused being involved in an FIR relating to commercial quantity of contraband under the NDPS Act, 1985. While considering a bail petition in a case involving commercial quantity, the Court has to keep in mind the rigours enumerated under Section 37 of NDPS Act, 1985 which mandates that Courts can grant bail to an accused only after hearing the public prosecutor and after having satisfied itself of twin conditions which are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not likely to commit any offence while on bail. The stringent rigours of Section 37 of the NDPS Act, 1985 must be meticulously scrutinized against the backdrop of accused's fundamental right to a speedy trial. The right to life and personal liberty cannot be rendered nugatory by unwarranted delays in the judicial process, particularly where such delay(s) is neither attributable to the accused nor justified at the end of the prosecution by cogent reasons. An individual cannot be kept behind bars for an inordinate period of time by taking refuge in rigours laid down in Section 37 of the NDPS Act, 1985. The legislature in its wisdom, in order to ensure speedy and timely disposal of the cases under the Act, has provided for the constitution of special Courts under Section 36-A of the Act. However, this Court cannot turn Nelson's eye to the protracted delays and systematic inefficiency that frustrate this legislative purpose. A Court of law is duty-bound to ensure that it does not become complicit in violation of an individual's fundamental rights, notwithstanding anything contained in a statute. While dealing with bail petition in a case governed by the rigours of Section 37 of the NDPS Act, 1985, the Court must strike a judicious balance between the legislative intent to curb the menace of drugs and the sacrosanct right of the accused to a fair and expeditious trial. Prolonged incarceration, without justifiable cause, risks transforming pre-trial detention into punitive imprisonment, an outcome antithetical to the principle of justice and equity.

Ergo, the unequivocal inference is that where the trial has failed to conclude within a reasonable time, resulting in prolonged incarceration, it militates against the precious fundamental rights of



life and liberty granted under the law and, as such, conditional liberty overriding the statutory embargo created under Section 37 of the NDPS Act, 1985 ought to be considered as per facts of a given case. In other words, grant of bail in a case pertaining to commercial quantity, on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985.”

6.3 As per the said custody certificate, the petitioner is stated to be involved in 2 other FIRs. Indubitably, the antecedents of a person are required to be accounted for while considering a regular bail petition preferred by him. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon’ble Supreme Court in *Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012 (1) RCR (Criminal) 586*; a Division Bench judgment of the Hon’ble Calcutta High Court in case of *Sridhar Das v. State, 1998 (2) RCR (Criminal) 477* & judgments of this Court in *CRM-M No.38822-2022* titled as *Akhilesh Singh v. State of Haryana*, decided on 29.11.2021, and *Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191*.

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

7. 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 CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned



CJM/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 cell-phone 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.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/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.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

29.5.2026

Ashwanii

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No