

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2026:PHHC:048157



CRM-M-35744-2025 (O&M)

Kulwinder Singh

... Petitioner

Vs.

State of Punjab & another

... Respondents

1.	The date when the judgment is reserved	20.03.2026
2.	The date when the judgment is pronounced	27.03.2026
3.	The date when the judgment is uploaded on the website	27.03.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Jaswinder Singh Grewal, Advocate for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Mr. Rajiv Sharma, Special Public Prosecutor NCB with
Mr. Vinayak Attri, Advocate and
Ms. Indu Bala Sharma, Advocate for respondent No.2/NCB/UOI.

...

Manisha Batra, J. (Oral).

1. The instant petition has been filed by the petitioner seeking benefit

of regular bail in case arising out of NCB complaint Crime No.34, dated

29.09.2024, registered under Sections 21, 23 and 29 of the NDPS Act, at NCB Zonal Unit Amritsar.

2. The aforementioned complaint has been filed on the allegations that on 29.09.2024, a call was received from 52 Battalion, Border Security Force, Jalalabad that the troops of BSF had recovered one packet of suspected narcotics along with one pistol, one magazine, 04 live rounds and had also apprehended the petitioner and co-accused Sukhdev Singh. The said information was reduced into writing by the concerned Inspector of complainant NCB and was forwarded to the Superintendent, NCB. The team of NCB reached at the place of occurrence. It was informed by the authorities of BSF that on receipt of a specific information, the troop had reached at the suspected place and had encircled the concerned field with the help of local villagers. The petitioner and co-accused, who were present there, had fired two rounds towards the members of the cordoning party. They were chased and apprehended and recovery of one pistol, one magazine, four live rounds, two mobile phones and one packet containing contraband, had been effected from them. The gross weight of the contraband was found to be 690 grams. The recovered contraband and arms/ammunitions were taken in to custody.

3. The petitioner and co-accused were formally arrested. On interrogation, they suffered disclosure statements admitting their involvement in smuggling of contraband by being into contact with a Pakistani smuggler, namely, Shahji through drones. They disclosed that accused Sukhwinder Singh @ Sunny, who was involved with them, had sent location from his mobile phone to the Pakistani smuggler and the packet of

heroin was dropped near them. However, they could not find it and thereafter when they were searching for the same, they were apprehended and accused Sukhwinder Singh @ Sunny managed to flee. The petitioner along with co-accused is now facing trial for commission of the aforementioned offences whereas a separate FIR bearing No.97, dated 23.10.2024 was registered against them at Police Station Sadar, under Sections 109 read with Section 3(5) and Section 25 of the Arms Act on the complaint lodged by the official of the 52 Battalion, BSF.

4. It is argued by learned counsel for the petitioner that he has been wrongly involved in this case on the basis of suspicion and presumptions. No recovery has been effected at his instance. The recovery as alleged by the complainant itself had been effected from the open fields. With regard to same incident, two separate cases have been got registered in an illegal manner. He is in custody since long. He is not required for further investigation. His further incarceration would not serve any useful purpose. His involvement in other cases cannot be considered to be a reason for denying benefit of bail to him. He has been extended benefit of bail in case FIR No.97 and is entitled to be released on bail in this case as well. There are no chances of conclusion of trial in near future since even charges have not been framed. It is, therefore, argued that he deserves to be extended the benefit of bail.

5. Per contra, learned Special Public Prosecutor has vehemently argued that the allegations against the petitioner are serious in nature. The petitioner along with co-accused was found present at the spot and was apprehended with contraband, firearms, ammunitions and cell phones. He

along with co-accused had fired shots upon the members of the troop with an intent to kill them. Commercial quantity of contraband has been recovered from them. Rigors of Section 37 of the NDPS Act are attracted in this case. The material witnesses are yet to be examined. The charges could not be framed so far since the petitioner and co-accused were not produced by the jail authorities. However, the trial may be expedited. The antecedents of the petitioner are not clean as he is involved in three more cases of serious nature. There are chances of his absconding or committing similar offences, if extended benefit of bail. It is, therefore, stressed that, he does not deserve to be extended the benefit of bail.

6. This Court has heard the rival submissions made by learned counsel for the parties.

7. The petitioner is alleged to have been found in conscious possession of commercial quantity of contraband, one illicit weapon, some ammunitions and two mobile phones. The allegations make out a *prima facie* case for commission of subject offences against him. Another FIR bearing No.97, dated 23.10.2024 was registered against the petitioner and co-accused on the allegations that at the time of recovery of contraband from them in this very case, they had fired shots with pistol upon the BSF officials. Learned counsel for the petitioner has placed on record copy of order passed by a Coordinate Bench of this Court showing that the petitioner and co-accused have been granted benefit of bail in that FIR. Though, the allegations as levelled against the petitioner make out a *prima facie* case for commission of the aforementioned offences against him, however, he is in custody since 29.09.2024. The trial will take considerable time to conclude

as none out of 09 prosecution witnesses has been examined so far. Even charges have not been framed. Therefore, the chances of conclusion of trial in near future are bleak. It is well settled proposition of law that grant of bail on account of delay in trial and long period of incarceration is to be considered in the light of Section 37 of the NDPS Act. Reliance in this regard can be placed upon the observations made by Hon'ble Apex Court in ***Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352***, wherein it was 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 of Cr.P.C. which is applicable to offence under the Act. It was also observed that jails are overcrowded and their living conditions are, more often than not, appalling. The danger of unjustified imprisonment is that inmates are more likely to be hardened rather than reformed. Reliance can also be placed upon ***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 Live Law (SC) 533***, wherein the Hon'ble Supreme Court had extended benefit of bail to the accused who had been incarcerated for a long period by observing that prolonged incarceration militated 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.

8. Reliance can also be placed upon ***Santosh Pawar Vs. State of Chhattishgarh & Anr., Criminal Appeal No.4883/2025***, which is a recently pronounced verdict of Hon'ble Supreme Court observing 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 abovementioned case the Hon'ble Supreme Court 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.

9. 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, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply.

10. 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 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.

11. The similar benefit has been extended 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***.

12. On analyzing the peculiar facts and circumstances of the present case in the light of the aforementioned principles of law, it transpires that the

petitioner has suffered prolonged incarceration for over a period of over 01 year, 05 months and 15 days, the trial is not likely to be concluded in near future; the continued detention of the petitioner is not likely to serve any fruitful purpose; there is nothing on record to show that if released on bail, the petitioner will not participate in the trial or will abscond.

13. In view of the above discussion, this Court is of the considered opinion that a case is made out for grant of bail to the petitioner. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing personal as well as surety bonds to the extent of two sureties in the like amount each, to the satisfaction of the learned trial Court/Duty Magistrate concerned, and subject to the condition that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case. He shall appear before the learned trial Court on each and every date of hearing except when his presence has been exempted by the trial Court. He shall surrender his passport, if any, furnish details of his cell phone and Aadhar card, and shall not change his mobile number(s) during the pendency of the trial.

14. It is clarified that the observations made above shall not be construed as an expression of opinion of this Court on the merits of the case and shall not influence the outcome of the trial in any manner.

15. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

(MANISHA BATRA)
JUDGE

27.03.2026

harjeet

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