



122

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

**CRM-M No.38820 of 2025
Date of Decision: 25.02.2026**

Gurmail Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. P. P. S. Duggall, Advocate
for the petitioner.

Mr. Raj Karan Singh, Asstt. A.G., Punjab.

RAJESH BHARDWAJ, J. (ORAL)

1. Present second petition has been filed praying for the grant of regular bail to the petitioner in case bearing FIR No.7, dated 21.01.2025, under Sections 21-B, 61, 85 of NDPS Act, registered at Police Station Jodhewal, Police District Ludhiana.

2. Succinctly, the facts of the case are that the police party was on patrolling on 21.01.2025 and at around 10:30 P.M., they saw a young man coming from the side of main GT road, Vanjali Hotel side on his motorcycle. He, on seeing the police, got perplexed and tried to turn around but due to heavy traffic, he could not, and threw a heavy black envelope after taking out from his jacket on the side of the road and tried to ran away. However, on suspicion, he was apprehended by the police party. On



asking, he disclosed his name to be Gurmail Singh (petitioner). He was suspected to be carrying some contraband in the black envelope having been thrown by him and thus, search of the same was conducted. On conducting the search of the black envelope, 265 grams of heroin was recovered. He failed to produce any licence regarding the conscious possession of the same, thus, the FIR was registered and he was arrested on the spot. On registration of the FIR, the investigation commenced. The samples taken were sent to the FSL. On receipt of the FSL report, the challan was presented and on framing of charges, the trial commenced. The petitioner approached the Court of learned Judge, Special Court, Ludhiana praying for the grant of regular bail. However, after hearing both the sides and finding no merit in the same, the lerned Judge, Special Court, Ludhiana declined the bail application filed by the petitioner vide order dated 25.03.2025. The petitioner earlier approached this Court by way of filing CRM-M-20979-2025 praying for the grant of regular bail, however the same was dismissed as withdrawn vide order dated 19.05.2025. Hence being aggrieved, the petitioner is again before this Court praying for the grant of regular bail by way of filing the present second petition.

3. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. He has submitted that the alleged recovery in the present case has been effected from the public place, however, no independent witness was joined. He has submitted that there is a violation of mandatory provisions of Section 50 of NDPS Act in conducting the search. He has submitted that as per the statute, quantity above 250 grams of heroin is commercial in nature whereas the alleged recovery effected from the petitioner including the



weight of the envelope is found to be 265 grams of heroin and thus, assails the weight of the contraband planted upon the petitioner. He has submitted that the alleged recovery if minus the weight of the envelope, then it could be of non-commercial quantity. He has submitted that the petitioner is involved in 05 other cases, however, he is on bail in all the cases. To buttress his arguments, learned counsel for the petitioner has submitted that the petitioner is behind bars from last more than 1 year, however, there is no material progress in the trial. He has submitted that in the facts and circumstances, the petitioner deserves to be granted regular bail.

4. *Per contra*, learned counsel for the State has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that the petitioner was arrested on the spot along with the contraband. He has submitted that the recovered contraband weighing 265 grams of heroin from the petitioner is commercial in nature and thus, the provisions of Section 37 of NDPS Act are attracted. He has submitted that the petitioner is a habitual offender, who is involved in 05 other cases of similar nature. He, on instructions, has submitted that out of total 17 prosecution witnesses, only 01 witness has been partly examined till date. He has produced custody certificate of the petitioner today in the Court, which is taken on record.

5. Heard.

6. On hearing learned counsel for the parties and perusing the record, it is deciphered that the alleged recovery of 265 grams of heroin effected from the petitioner is from the public place. However, the quantity above 250 grams of heroin is commercial in nature. The petitioner was arrested on the spot and since then, he is behind bars. Custody certificate



produced would show that the petitioner has suffered an incarceration of 01 year, 01 month and 02 days as on 24.02.2026. It further reflects that the petitioner is involved in 05 other cases, however, in 02 of the cases, he is on bail, in 01 case, he has completed the sentence awarded to him and in 01 case, he has been acquitted. Out of total 17 prosecution witnesses, 01 witness has been partly examined so far.

7. 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 of law 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.

20. xxxxx

21.it 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.

22. xxxxx

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.”

8. The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court.

9. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the arguments raised by both the sides and perusing the record, the Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for the grant of bail.

10. 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. However, 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 this



case.

11. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

25.02.2026

rittu

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE