

In the High Court of Punjab and Haryana, at Chandigarh**Criminal Misc. No. M-41940 of 2025****Date of Decision: 30.01.2026**

Raj Kumari

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.Present: Mr. Manoj R, Sharma, Advocate
for the petitioner(s).Mr. Rohit Bansal, Senior Deputy Advocate General,
Punjab, for the respondent.**Surya Partap Singh, J.**

1. For the commission of offence punishable under Sections 22 and 27A of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter being referred to as “the NDPS Act” only [Section 29 of the NDPS Act added later on], the FIR No. 34 dated 10.03.2025 has been lodged in Police Station Dinanagar, District Gurdaspur, Punjab. This is first petition for bail, filed by the petitioner, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, hereinafter being referred to as “BNSS” only.

2. During the course of investigation of above mentioned case, the petitioner was arrested on 19.03.2025. The petitioner is in custody since then, and therefore, for the concession of bail he has approached this Court, by virtue of present petition under Section 483 of BNSS.

3. In nut-shell the facts emerging from the record are that the FIR

of this case came into being at the instance of 'ASI Balkar Singh' who had reported that on 10.03.2025 when he was heading a team of police officials deputed for patrolling duty, at about 07.30 P.M., he spotted a person who was sitting on a cement bench. As per above named police official when the above said person noticed the presence of police party, he picked up a black colour polythene bag from his right pocket of pant and threw it away on the road side. According to the above named police official, the above said person was apprehended and when the contents of bag were checked it was found that in the above mentioned bag he was carrying 27 tablets of 'Etizolam'. It is the case of prosecution that on inquiry, the above said person disclosed his name as 'Lucky' son of Tarsem Lal. According to prosecution, on recovery of above mentioned contraband, requisite formalities with regard to seizure & sealing of contraband, lodging of FIR and arrest of the accused were undertaken and thereafter, further investigation taken up.

4. According to prosecution, during the course of investigation when the above named accused was interrogated he suffered a disclosure statement, and nominated the present petitioner as the supplier of contraband.

5. Heard.

6. It has been contended on behalf of petitioner that nothing has been recovered from the possession of petitioner, and that the petitioner has already suffered prolonged incarceration for being in custody for a period of more than ten months. It has been further contended by learned counsel for the petitioner that the only evidence collected by the Investigating Agency

against the petitioner is the disclosure statement of co-accused which is inadmissible in evidence, as the same was recorded when the co-accused was already in custody.

7. Per contra, the learned State counsel has contended that the recovery in the present case comes within the ambit of commercial quantity, and that there is direct evidence against the petitioner. In addition to above, the learned State counsel has also contended that the petitioner does not have clean antecedents as she has faced prosecution in four other cases also including three cases under the NDPS Act. According to learned State counsel without satisfying the twin conditions enshrined under Section-37 of the NDPS Act, the petitioner is not entitled for the benefit of bail.

8. The record has been perused carefully.

9. As far as the principles governing the benefit of bail in a case related to NDPS Act, are concerned, the principles of law laid down by the Hon'ble Supreme Court in the case of Mohd. Muslim alias Hussain v. State (NCT of Delhi), (2023) 18 Supreme Court Cases 166 are relevant, wherein the Hon'ble Supreme Court has 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 which is applicable to offences under the Act.

10. In this regard it is also relevant to mention here that the Hon'ble Supreme Court of India in the case of Man Mandal and Another v. The 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 SCC Online SC 1109, extended the benefit of bail to the accused, who had been incarcerated

for a period of almost 2-3 years and the trial was likely to take considerable time. The above-mentioned benefit has been given by observing that prolonged incarceration generally militates 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.

11. In addition to above, in a recently pronounced verdict in the case of Santosh Pawar v. State of Chhattisgarh & Another (Criminal Appeal No.4883/2025, decided on 14.11.2025) the Hon'ble Supreme Court observed 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 above-mentioned case the Hon'ble Supreme Court of India 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.

12. In another case, i.e. in the case of Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 Supreme Court Cases 51 prolonged incarceration and inordinate delay engaged the attention of the Hon'ble Supreme Court of India, 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.

13. In the case of Ismail Khan alias Pathan v. State of Rajasthan

(Criminal Appeal No.4911 of 2025, decided on 18.11.2025) with regard to recovery of commercial quantity of narcotic substance the Hon'ble Supreme Court of India 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.

14. The similar benefit has been taken in another appeal i.e. Ebrahim alias Ibrahim SK v.. The State of West Bengal [Special Leave Petition (Criminal) No.15699 of 2025, decided on 14.11.2025] and in the case of Pamesh Arora v.. UT Chandigarh (Criminal Appeal No.4872 of 2025, decided on 14.11.2025).

15. In the case of Hasanujjaman & Others v. The State of West Bengal' [Special Leave Petition (Criminal)No.3221 of 2023], the benefit of bail has been accorded by the Hon'ble Supreme Court of India to an accused, who was found in the possession of 115 bottles of phensedyl, after considering that he was in custody for a period of about 01 year and 03 months. It has been further observed by the Hon'ble Supreme Court of India in the above mentioned case that 'the investigation is complete; charge-sheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of Section-37 of NDPS Act'.

16. Similarly, in the case of Nandlal Mondal @Abhay Mondal V/s The State of West Bengal [Special Leave Petition (Criminal) No.12788/2023], the Hon'ble Supreme Court of India has observed that the

benefit of bail was afforded to the accused, who was found in possession of 10,000 ml of codeine phosphate, after a gap of one and a half year by considering that conclusion of trial would take long time.

17. A perusal of the record shows that there are several factors which are required to be taken into consideration at this stage. Those factors are:-

- i) that nothing has been recovered from the possession of petitioner;
- ii) that the petitioner is already in custody for a period of more than ten months;
- iii) that the only evidence collected against the petitioner is the confessional statement of petitioner herself, and of her co-accused. There is a big question mark with regard to admissibility of above mentioned statement in evidence and also qua its credibility;
- iv) that nothing is left to be recovered from the possession of petitioner;
- v) that the trial of the case is not likely to be concluded in near future;
- vi) that detention of the petitioner behind the bars is not likely to serve any purpose;
- vii) that there is nothing on record to show that while on bail, the petitioner is likely to tamper with the evidence or influence the witnesses; and
- viii) that there is nothing on record to show that while on bail, the petitioner will not participate/cooperate in the trial.

18. With regard to the legal aspect involved in the instant case, it is relevant to mention that the Hon'ble Supreme Court in the case of Dataram v. State of Uttar Pradesh and Another(2018) 3 Supreme Court Cases 22, has

presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.”

19. The principles laid down by the Hon’ble the Supreme Court of India in the case of Satender Kumar Antil (supra), are also relevant in this case. In the above mentioned case, it has been observed that “*the rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided*

strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.”

20. Recently, in the case of *Tapas Kumar Palit v. State of Chhattisgarh*, 2025 SCC Online SC 322 the Hon’ble Supreme Court of India has observed that *“if an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed.”* It has also been observed by the Hon’ble Supreme Court of India in the above mentioned case that *“delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.”*

21. Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as mandated by Hon’ble Apex court in *Balwinder Singh versus State of Punjab and Another* 2024 SCC Online SC 4354.

22. If the cumulative effect of all the above mentioned factors, involved in the instant case, is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail, and that the present petition deserves to be allowed.

23. Accordingly, without commenting anything on the merits of the case, the present petition is hereby **allowed**. The petitioner is hereby ordered to be released on bail on furnishing personal bond and surety bond(s) to the satisfaction of learned trial Court, subject to the following conditions:-

- a) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority;
- b) that the petitioner shall at the time of execution of bond, furnish the address to the Court concerned and shall notify the change in her address to the trial Court, till the conclusion of trial; and
- c) that the petitioner shall not leave India without prior permission of the trial Court.

24. It is, however, made clear that any observation made here-in-above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

(Surya Partap Singh)
Judge

January 30, 2026
“DK”

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