

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2026:PHHC:006683



222

CRM-M-42743-2025 (O&M)

Date of decision:19.01.2026

Avtar Singh @ Gopi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Raghav Chadha, Advocate for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

...

Manisha Batra, J. (Oral).

1. The present one is the second petition as filed by the petitioner under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking concession of regular bail in case arising out of FIR No.26 dated 03.03.2023, registered under Sections 22 and 29 of the NDPS Act, at Police Station Garhshankar, District Hoshiarpur.

2. As per the allegations, on 03.03.2023, the petitioner was found to be in conscious possession of intoxicating powder of alprazolam, weighing 110 grams, kept in a plastic packet and was arrested. The recovered contraband was taken into custody. Investigation now stands completed and the petitioner is facing trial for the commission of aforementioned offences. The previous petition as filed by him had been dismissed as withdrawn vide order dated 22.07.2025.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. A false recovery has been planted upon him. He is in custody since 03.03.2023. There are no chances of conclusion of the trial in the near future since none out of 10 prosecution witnesses, has been examined. He has been extended benefit of bail in other cases as registered against him and cannot be denied benefit of bail only because of his involvement in those cases. His further incarceration would not serve any useful purpose. It is, therefore, urged that he deserves to be extended the benefit of bail.

4. Status report and custody certificate have been filed. It is argued by learned State counsel that there are serious allegations against the petitioner since commercial quantity of contraband was recovered from his conscious possession. There are chances of his absconding or committing similar offences as he has criminal antecedents, if extended benefit of bail. It is, therefore, argued that this being the successive bail application, is not even maintainable and is liable to be dismissed.

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

6. The petitioner is alleged to have been found in possession of commercial quantity of contraband. The allegations make out a prima facie case against him for commission of the aforementioned offences. He is in custody for a period of almost about 02 years but no prosecution witness has been examined so far. It is apparent that there is no likelihood of conclusion of trial in the near future. This factor, in the opinion of this Court, is a ground to move for bail afresh. The Hon'ble Apex Court has observed in a

catena of cases that an accused cannot be kept in custody for an indefinite period of time, and the bail application can be considered on its own merits even if it is filed repeatedly. It has also been held that every day spent in custody can provide a new cause of action for filing a bail application under certain circumstances. This principle is a part of the broader approach emphasizing that law prefers bail over jail, aiming to balance the rights of the accused with the requirements of the criminal justice system. Prolonged detention itself is a ground for reconsideration of bail since the settled principle of law is that detention prior to trial should not become punitive. Involvement of the petitioner in other case cannot be considered to be a ground for denying benefit of bail to him. Rigors of Section 37 of the NDPS Act cannot be stated to be attracted against him. 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 Rabdi Prakash v. State of Odisha, 2023 SCC Online SC 110***, 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.

7. 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 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.

8. 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 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.

9. In the case of ***Ismail Khan @ Pathan vs. State of Rajasthan Crminal Appeal No.4911 of 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.

10. 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***.

11. 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 a period of almost 02 years, the trial is not likely to be concluded in near future as none out of 10 prosecution witnesses has been examined; 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. As such, the prolonged detention of the petitioner amounts to drastic change in circumstances extending fresh ground to petitioner to seek bail.

12. 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, 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 Aadhaar card, and shall not change his mobile number(s) during the pendency of the trial.

13. 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.

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

19.01.2026

harjeet

(MANISHA BATRA)
JUDGE

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