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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

214

CRM-M-43675-2025

Date of decision: 22nd January, 2026

Gurbhej Singh @ Sajan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. G.S. Randhawa, Advocate for the petitioner.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab.

MANISHA BATRA, J (ORAL):-

The instant one is the second petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') by the petitioner seeking grant of regular bail in case bearing FIR No. 129 dated 29.07.2023 registered under Sections 21, 22, 23 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') and Sections 25 and 27 of Arms Act, 1959 at Police Station Gharinda, Amritsar (Rural). His previous petition bearing CRM-M-39463-2024 had been dismissed vide order dated 04.04.2025.

2. The allegations against the petitioner are that as on 29.07.2023, he along with the co-accused Dharwinder Singh @ Dharminder Singh was found in conscious possession of one .32 bore pistol and 265 grams of heroin,

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whereas recovery of commercial quantity of contraband and one pistol was effected from the co-accused. Apart from that on conducting search of the car, 35 live cartridges of .32 bore and drug money to the tune of Rs. 1,50,000/- was recovered. The previous petition filed by the petitioner had been dismissed by making following observations:-

“As per the allegations, the petitioner was apprehended by the police party on 29.07.2023 along with aforesaid co-accused and recovery of 310 grams of heroin and one .32 bore pistol was effected from him. The quantity of the recovered contraband falls under the commercial quantity. Hence, the rigors of Section 37 of the NDPS Act would certainly be attracted against the petitioner. He is also shown to be involved in one more case of similar nature, apart from one other case which has been registered against him under the provisions of the Arms Act. Although, the petitioner has placed on record certain photographs in order to establish that he was in fact picked from a Dhaba but these documents cannot be looked into by this Court at this stage while deciding a bail petition. The allegations against the petitioner are quite serious. The trial is going on and there is nothing on record to show that there would be any undue delay in conclusion of trial. The apprehension expressed by learned State counsel that the petitioner, if extended benefit of bail, may abscond or indulge in similar offences can also not be stated to be unfounded. Keeping in view the discussion as made above, the quantity of recovered contraband, the antecedents of the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioner does not deserve to be granted benefit of regular bail, at this stage. Hence, the petition is dismissed.”

3. It is argued by learned counsel for the petitioner that he is in custody since for a period of over two years, five months, and twenty-four

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days. Only 01 out of 15 prosecution witnesses has been examined so far. Trial has not progressed any further. Even the co-accused Dharwinder Singh, whose case is on similar footing has been extended benefit of bail. On parity and on account of his prolonged incarceration, a fresh ground has been made out in his favour to seek benefit of bail. It is, thus, argued that he deserves to be released on bail.

4. Learned State counsel, on the other hand, has vehemently argued that taking into consideration the gravity of the allegations as levelled against the petitioner, the fact that rigors of Section 37 of NDPS Act are attracted in this case and further that this is the second petition, she has argued that the same is not maintainable and does not deserve to be allowed.

5. This Court has heard learned counsel for the parties at considerable length.

6. The petitioner has been incarceration since 29.07.2023. Trial is going at snail's pace as only 01 prosecution witness has been examined so far and therefore, it is obvious, there are no chances of the conclusion of the trial in near future. The petitioner is in custody for a period of about 02 years, 05 months and 24 days. 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

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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. 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 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***

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Chhattishgarh & Anr., Criminal Appeal No.4883/2025, which is a recently pronounced verdict of Hon'ble Supreme Court observing that rigours 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.

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 Criminal 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***

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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 two years, five months, and twenty-four days; trial is likely to take time; 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.

12. In view of the above discussion, this Court is of the opinion that a case is made out for grant of bail to the petitioner at this stage. 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 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 Aadhar 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.

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

[MANISHA BATRA]
JUDGE

22nd January, 2026
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |