

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2026:PHHC:016376



212

CRM-M-44599-2025 (O&M)

Date of decision:04.02.2026

Akash Gupta

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. P.S. Sekhon, Sr. Advocate with
Mr. G.S. Dhillon, Advocate and
Mr. Devansh Khanna, Advocate for the petitioner.

Mr. Roshandeep Singh, AAG, Punjab.

...

Manisha Batra, J. (Oral).

Instant one is the second petition as filed by the petitioner for grant of regular bail in case arising out of FIR No.26, dated 11.03.2024, registered under Sections 21, 21-C, 29 of the NDPS Act, at Police Station Jalandhar Cantt, District Jalandhar, on the allegations that on 11.03.2024, he was apprehended by a police party and recovery of 100 grams of heroin was effected from his conscious possession. After his formal arrest, he was interrogated and suffered disclosure statement. In pursuance of his disclosure statement, he further got recovered 160 grams of heroin, which was kept in a Fortuner car. Recovery of one i20 car along with one pistol and four live cartridges has also been effected on the basis of his disclosure statement. Persons nominated as additional accused in pursuance of his

disclosure statement were also arrested and recovery of 150 grams of ice and drug money to the tune of Rs.8 lakhs was also effected. The previous petition as filed by him has been dismissed by this Court vide order dated 19.02.2025.

2. It is argued by learned counsel for the petitioner that after dismissal of his previous petition, a period of more than 1 year has passed. However, the trial has not progressed much as only 02 out of 22 prosecution witnesses have been examined so far. There are no chances of conclusion of trial in near future. His prolonged incarceration is a fresh ground for him to seek concession of bail. Co-accused Karimi has also been extended benefit of bail. On parity, he too deserves to be extended the same benefit. With these, broad submissions, it is, urged that he deserves to be extended the benefit of bail.

3. Learned State counsel on the other hand has argued that the previous petition as filed by the petitioner had been dismissed by passing a detailed order. There is no substantive or drastic change in the circumstances. Moreover, this is a successive bail petition. There are chances of his absconding or committing similar offences, if extended benefit of bail. He is a habitual offender. It is, therefore, stressed that the petition does not deserve to be allowed.

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

5. The previous petition as filed by the petitioner had been dismissed by this Court vide order dated 19.02.2025. However, now even after a period of about 01 year, there is no progress in the trial as only 02

prosecution witnesses have been examined so far. Petitioner is in continued incarceration for a period of 01 year, 10 months and 13 days. As already observed, there are no chances of the conclusion of trial in near future. It has also been held that every day spent in custody provides 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 ***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.

6. 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.

7. 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.

8. 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.

9. 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***.

10. 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 01 year, 10 months and 13 days, the trial is not likely to be concluded in near future as only 02 out of 22 prosecution witnesses have 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.

11. 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 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.

12. 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.

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

04.02.2026

harjeet

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(MANISHA BATRA)
JUDGE