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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRR No. 2346 of 2025 (O&M)

Date of decision : 30.01.2026

Saleem Ali @ Bittu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Satnam Singh Gill, Advocate and
Ms. Manjot Kaur, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed by the petitioner seeking quashing of order dated 12.09.2025, passed by the Court of learned Judge, Special Court, SAS Nagar in case arising out of FIR No. 117 dated 06.05.2025, registered under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'Act'*) at Police Station Dera Bassi, District SAS Nagar, whereby an application filed by the petitioner under Section 187(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) [*which is pari materia with Section 167(2) of Cr.P.C.*], seeking grant of default bail, had been dismissed.

2. Brief facts of the case relevant for the disposal of this petition are that on 06.05.2025, on the basis of a secret information, the petitioner and co-accused Hareep Singh @ Deepa, while travelling in a car, were apprehended by a police party headed by ASI Gurwinder Singh and recovery of 2.5 kgs. of

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opium was effected from the said car. Both of them were formally arrested at the spot. During the pendency of investigation, the petitioner moved an application under Section 187(3) of BNSS on 11.09.2025 seeking grant of default bail before the Court concerned on the ground that a period of 90 days had expired from the date of his arrest i.e. 06.05.2025 and challan was not filed by that date. Hence, he was entitled to be released on default bail. However, the said application had been dismissed by the learned trial Court by making following observations :

“4. As the version of the prosecution goes, on 06.05.2025, 2.5 Kgs of contraband, stated to be Opium, had been recovered from the possession of the accused. Until and unless, the report of the FSL is received, any attempt made to identify the nature of the substance would be principally conjectural in nature since no such chemical test was conducted so as to even prima facie determine the nature of the salt/substance.

5. On the same analogy, until and unless the report of the chemical examiner is received, the Court would never be in a position to ascertain as to what is the nature of the recovered substance and that if the recovered substance is a proscribed substance under NDPS Act, whether the same is commercial in nature or non-commercial. Therefore, at this prefatory stage, it cannot be contended by the accused/applicant to his benefit that the time period governing investigation in the present case would be 90 days under Section 187 (3) of BNSS. Noteworthy is the fact that in case of commercial quantity, under section 36A(4) of NDPS Act, the period ‘90 days’ is to be construed as ‘180’ days. Evidently that period has not expired so far and therefore the accused/applicant cannot

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secure bail under Section 187 (3) of BNSS since the probability of the recovered substance falling in commercial quantity under the NDPS Act would always exist and the picture would be clarified in definitive terms only on the receipt of the report of the chemical examiner. As such the bail application is found to be unmaintainable and is dismissed accordingly.”

3. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court did not take into consideration the fact that as per Section 2(vii-a) of the Act, the quantity of the recovered contraband would fall under non-commercial quantity and, therefore, the limitation for filing challan would be a period of 90 days from the date of apprehension of the petitioner. However, the prosecution had failed to submit the challan within the stipulated time. Hence, the petitioner was entitled to be granted concession of default bail on the strength of non-filing of challan within 90 days. He is in custody since 06.05.2025. He has clean antecedents. Since the quantity of the recovered contraband does not fall under commercial quantity, the bar under Section 37 of the Act is not attracted at all. It is, therefore, argued that the impugned order is liable to be set aside and the petition deserves to be allowed, thereby granting benefit of default bail to the petitioner.

4. Reply has been filed by the respondent-State. In terms of the same, learned State counsel has argued that there is no illegality or infirmity in the impugned order. Commercial quantity of the contraband had been recovered from the petitioner and co-accused. Hence, the limitation to present

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challan was 180 days and not 90 days. Hence, it is urged that there is no merit in the petition and the same is liable to be dismissed.

5. This Court has heard the rival submissions.

6. Before proceeding further, it would appropriate to have a look on Section 2(vii-a) of the Act, which defines commercial quantity. The same reads as under : -

“Section 2 (vii-a): “commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity **greater than** the quantity specified by the Central Government by notification in the Official Gazette.”

7. The Government had issued a notification bearing No. S.O. 1055 (E), dated 19.10.2001, which was published in the Gazette of India, specifying the small quantity and commercial quantity of different types of narcotic and psychotropic substances in a tabulated form. The ‘Opium’ finds mention at Sr. No. 92 of this table and the quantity specified therein to determine the commercial quantity in relation to opium is mentioned as 2.5 kgs. Hence, on a conjoint reading of Section 2(vii-a) of the Act as well as the contents of this notification with regard to opium, it can conclusively be stated that any quantity in relation to opium, which is greater than 2.5 kgs., shall fall under commercial quantity.

8. Although Section 2(vii-a) of the Act itself unambiguously provides that “commercial quantity” shall mean a quantity **greater than** that specified in the notification, however, judicial precedents may still be referred to reinforce its correct understanding, ensure uniform application and dispel any misinterpretation that may arise in its implementation. Reliance can be

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placed upon the Full Bench judgment of the Himachal Pradesh High Court in rendered in ***Ratto v. State of H.P.***, decided on 13.06.2003, wherein it was held that that the expression “commercial quantity” occurring in Section 2(vii-a) of the Act must be construed strictly in accordance with its plain grammatical meaning. It was further held that since the statute uses the expression “*quantity greater than the quantity specified by the Central Government*”, the notified quantity itself cannot be treated as commercial quantity. Hence, the possession of exactly one kilogram of *Charas* was not considered to be commercial quantity, as the “commercial quantity” would only mean a quantity more than one kilogram and not the quantity specified in the notification itself. Reliance can also be placed upon ***Firm L. Hazari Mal Kuthiala v. Income-tax Officer, AIR 1957 Punjab 5*** and ***Nelson Motis v. Union of India, (1992) 4 SCC 711***, wherein Hon’ble Supreme Court had held that penal statutes, particularly those carrying severe consequences on personal liberty, must be interpreted strictly and literally, and the Courts are not permitted to expand their scope by importing presumed legislative intent and where the language of a statute is plain and unambiguous, it must be given effect to as it stands, irrespective of consequences.

9. Reference can also be made to ***New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar, AIR 1963 SC 1207*** and ***Polester & Co. Ltd. v. Additional Commissioner of Sales Tax, New Delhi, AIR 1978 SC 897***, wherein it was observed by Hon’ble Supreme Court that no words can be added to or subtracted from a statutory provision unless such construction is unavoidable to prevent absurdity and that Courts cannot re-draft legislation

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under the guise of interpretation. Similar view was taken by the Hon'ble Supreme Court in *Vatan Mal v. Kailash Nath*, AIR 1989 SC 1534 and *Shashikant Laxman Kale v. Union of India*, AIR 1990 SC 2114.

10. Further, reliance can also be placed upon *State of Tamil Nadu v. Sivarasan @ Raghu*, (1997) 1 SCC 682, wherein the Hon'ble Supreme Court had underscored that stringent penal laws demand stricter compliance and interpretation and that in matters concerning bail, any interpretation impacting personal liberty must lean in favour of the subject rather than the prosecution.

11. On summarizing the ratio of law laid down in the aforecited case, it can be stated that the expression "commercial quantity" under Section 2(vii-a) of the Act is to be construed strictly and literally and only a quantity *greater than* that specified in the Central Government notification can be treated as commercial. Consequently, it is crystal clear that the notified quantity itself falls outside the ambit of commercial quantity and the rigors of Section 37 of the Act are attracted only when such statutory threshold is crossed.

12. Now advertng to the peculiar facts of the present case. At the cost of repetition, it can be mentioned that the quantity of the contraband allegedly recovered from the petitioner and co-accused was exactly 2.5 kgs. of opium, which was obviously not greater than the quantity specified in the notification in relation to opium. Hence, the challan in this case was required to be presented within a period of 90 days from the date of registration of the FIR i.e. 06.05.2025. However, the same was presented only on 23.09.2025, which was beyond the period of 90 days. The petitioner had filed the

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aforementioned application for grant of default bail on 11.09.2025 and by that day, the challan was admittedly not presented. A perusal of the impugned order would show that the learned the trial Court had observed that in the absence of the FSL/chemical examiner’s report, the exact nature of the recovered substance and its quantity for the purposes of the Act could not be conclusively determined. Since no chemical test had been conducted at that stage, the learned trial Court was not in a position to determine as to whether the substance was indeed a prohibited narcotic, and if so, whether it fell within commercial or non-commercial quantity. However, now the FSL report has been received, which confirmed that the recovered substance was opium. Hence, it leaves no room for any ambiguity about the period prescribed for presentation of challan, which was 90 days.

13. In view of the discussion as made above, this Court is of the considered opinion that the present petition has merit. Accordingly, the same is accepted. The impugned order dated 12.09.2025 is hereby set aside. As a consequence, the petitioner is directed to be released on bail, subject to his furnishing personal/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate, concerned.

30.01.2026
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>