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CRM-M-61102-2025 (O&M)**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(223)****CRM-M-61102-2025 (O&M)
Date of decision : 21.01.2026****MOHAMMAD MAKSOOD****... Petitioner****Versus****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA****Present: Mr. Harish Sharma, Advocate for the petitioner****Ms. Sakshi Bakshi, AAG, Punjab************MANISHA BATRA, J. (ORAL)**

1. The present petition is the second petition filed by the petitioner under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking grant of regular bail in case arising out of FIR No.70 dated 22.10.2022 registered under Section 18 of Narcotics Drugs and Psychotropic Substances Act (for short "NDPS") at Police Station Sadar Kurali, District SAS Nagar (Mohali). His previous petition was dismissed by this Court on 20.12.2023.

2. As per the allegations, on 22.10.2022, the petitioner alongwith the co-accused Duarka Suhani was apprehended on the basis of secret information and 04 kgs of opium was recovered from a bag carried by them which was taken into custody. The petitioner and co-accused were formally arrested. Investigation now stands completed

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and both of them are facing trial for commission of aforementioned offences.

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 for a period of over 03 years 02 months and 26 days. Trial is likely to take considerable time to conclude as only 05 out of 15 witnesses have been examined so far. He has clean antecedents. His continued detention would not serve any useful purpose. His previous petition had been dismissed on 20.12.2023 i.e. for over more than 02 years back. His prolonged period of incarceration has furnished a new ground to him for seeking concession of bail. The co-accused has already been granted benefit of bail. With these broad submissions, it is urged that the petition deserves to be allowed.

4. Status report and custody certificate have been filed. Learned State counsel has argued that the allegations against the petitioner are serious in nature. Commercial quantity of contraband was recovered from him and the co-accused. The rigors of Section 37 of NDPS Act are attracted in this case. There are chances of his absconding or committing similar offence, if extended benefit of bail as he hails from State of Bihar. It is, therefore, stressed that the petition does not deserve to be allowed.

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

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6. The petitioner along with the co-accused was allegedly found to be in conscious possession of commercial quantity of contraband. The allegations prima facie makes out a case for commission of subject offences. However, he has been in custody for a period of over 03 years, 02 months and 26 days. Trial is obviously not going to be concluded in near future as only 05 out of 15 prosecution witnesses have been examined so far. 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. It is well settled proposition of law that grant of bail on account of delay in trial and long period of incarceration is to be considered in the light of Section 37 of the NDPS Act. 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

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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 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.

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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 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 03 years, 02 months and 26 days, the trial is not likely to be concluded in near future as only 05 out of 15 witnesses have been examined so far. 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



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abscond. On parity also, the accused deserves to be extended benefit of bail as co-accused has already been extended the same benefit.

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 subject to his furnishing personal as well as surety bonds to the extent of two sureties to the satisfaction of the learned trial Court and further 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. That apart, the petitioner shall also ensure his presence before the SHO, Police Station concerned, once in two months till the conclusion 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.

(MANISHA BATRA)
JUDGE

21.01.2026
Amit Sharma

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