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

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**CRM-M-61104-2025 (O&M)
Date of decision : 10.03.2026**

Barkat

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition that has been filed by the petitioner under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to him in case arising out of FIR No. 74 dated 05.03.2024, registered under Sections 20(b)(ii)(C), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station City Sohana, District Gurugram. His previous petition was dismissed by this Court on 24.03.2025.

2. The petitioner has been facing trial for commission of aforementioned offences on the allegations that on 05.03.2024, recovery of 549 kgs. of *Ganja* was effected from of a truck bearing registration number HR-38-AC-7912, which was found to be in the ownership of the present petitioner. Co-accused Tasleem and Mukeem were found to be the driver and conductor, respectively, of the said vehicle. It was disclosed by them that they were

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bringing the contraband from Vishakhapatnam on the asking of the petitioner.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case on the basis of the disclosure statement of the above named co-accused, which cannot be considered to be admissible in evidence. He was neither named in the FIR nor in the secret information. There is nothing on record to show that the petitioner had made any financial transaction with the co-accused for the purpose of sale/purchase of contraband. The said vehicle belongs to one Sher Mohd. and not to the petitioner. Mandatory provisions of the NDPS Act were not complied at all. He is in custody for a period of more than two years. There is prolonged pendency of the trial in the present case, and there is no likelihood of its conclusion in the near future, particularly as only seven out of twenty five prosecution witnesses have been examined so far. Trial has also not progressed since the date of dismissal of his previous petition. The extended period of his incarceration is a sufficient and new ground to seek concession of bail to him. His continued detention would not serve any useful purpose. He is not involved in any other case of similar nature. Co-accused Shamim and Nitin have already been granted concession of regular bail by this Court. On parity, he too deserves to be given the same benefit. Hence, it is urged that the petition deserves to be allowed.

4. Status report has been filed by respondent-State. It is argued by learned State counsel that taking into consideration the gravity of the allegations levelled against the petitioner as well as the fact that commercial quantity of the contraband was recovered in this case, he does not deserve to be released on bail. The petitioner was in constant touch with the co-accused over

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phone. He had made several bank transactions with them and has also received cash amount for sale of contraband. Therefore, it is stressed that the petition does not deserve to be allowed.

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

6. The petitioner is alleged to be the owner of the aforementioned truck from which commercial quantity of *Ganja* was recovered on 05.03.2024. The allegations against him are that it was on his instructions that co-accused were transporting the contraband in the said truck. Though the allegations levelled against the petitioner make out a prima facie case against him for commission of aforementioned offences, however, a perusal of the record reveals that the petitioner is in custody since 06.03.2024 but only seven out of total twenty five prosecution witnesses have been examined so far, which means that the trial is likely to take time to conclude. 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

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period of incarceration is to be considered in the light of Section 37 of the NDPS Act. 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 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

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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 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 more than two years, the trial is not likely to be concluded in near future as most of the

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prosecution witnesses are yet to be examined; he is not involved in any other case of similar nature, 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 is exempted by the trial Court.

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.

10.03.2026

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No