

2026:PHHC:005352



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-61472-2025

Date of decision: 16th January, 2026

Kundan Mal Menariya

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Kanisth Ganeriwala, Advocate for the petitioner.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been 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. 109 dated 06.08.2025 registered under Sections 15(c), 27 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') at Police Station Bahavwala, District Fazilka.

2. As per the allegations, on 06.08.2025 while performing patrolling duty at a barricade, a canter No. PB13-BR-3723 was stopped. Driver of the same disclosed his name Harbans Singh @ Happy and something suspicious was seen in his behaviour. The vehicle was checked after performing due formalities and 51 kgs and 406 grams of poppy husk was

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found to be kept in the vehicle which was taken into possession. The above named accused was formally arrested. on interrogation, he suffered disclosure statement to the effect that the recovered contraband belonged to the present petitioner and was brought by him to be delivered at Punjab. The petitioner was as such nominated as an accused. He was arrested on 14.08.2025. Investigation now stands completed and the petitioner along with the co-accused is 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 on the basis of disclosure statement of the co-accused which cannot be considered to be admissible in evidence. The alleged recovery could not be stated to be of commercial quantity as the weight of the bags was also counted. The petitioner is in custody for a period of five months. Trial is likely to take time to conclude. He has clean antecedents. His further incarceration would not serve any useful purpose. It is, therefore, stressed that he deserves to be released on bail.

4. Status report and custody certificate have been filed by respondent-State. It is argued by learned State counsel that keeping in view the gravity of the allegations is alleged to be committed by the petitioner, he does not deserve to be released on bail. Therefore, it is urged 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 have been involved in business of sale

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of poppy husk and as per the allegations, it was the contraband provided by him that was being carried in the vehicle from where it was recovered. He is in custody since 14.08.2025. He was not named in the FIR. He was nominated on the basis of disclosure statement of the co-accused. The rigors of Section 37 of NDPS Act are not attracted against him. The well settled proposition of law is that the Court while considering an application for grant of bail has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of accused absconding or fleeing, if released on bail and reasonable apprehension of the witnesses being threatened. The period of incarceration is also relevant fact that is to be considered. It is also unequivocally established that, to be granted bail, the accused charged with offence under the provisions of NDPS Act must fulfill the conditions stipulated in Section 37 of the Act. A contention has been raised that the rigors of Section 37 of the NDPS Act are attracted in the present case as there is recovery of commercial quantity of contraband.

7. The case of the prosecution is that the name of the petitioner was disclosed by the co-accused Harbans Singh @ Happy, from whom recovery of 51 kgs and 406 grams of poppy husk has been effected. As per his disclosure statement, he had sourced the contraband from the petitioner. In ***Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1***, it was observed by

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Hon'ble Apex Court that the disclosure statements made under Section 67 of NDPS Act, are inadmissible in evidence unless corroborated by independent material. While the veracity of the disclosure statement against the petitioner will be tested during the course of trial, however, at this stage, it cannot be ignored that no recovery was ever effected from the petitioner. In view of the above discussion, this Court is of the opinion that the bar under Section 37 of the NDPS Act does not come in the way of granting bail to the petitioner. The petitioner is in custody since 14.08.2025. Challan has not been presented and charges have also not been framed. In such circumstances, the trial is likely to take long time to conclude. The object of jail is to secure the appearance of the accused during the trial and it can neither be punitive nor preventive and the deprivation of liberty has been considered as a punishment. As per the discussion made above, this Court is of the considered opinion that a case for release of the petitioner is made out. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the learned trial Court/Chief Judicial Magistrate/ Duty Magistrate concerned and on the following conditions:-

(i) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case in any manner whatsoever.

(ii) he shall not leave the country under any circumstance without

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permission of the learned trial Court.

(iii) he shall appear before the learned trial Court as and when directed.

(iv) he shall provide his address where he would be residing after release and shall not change the same without informing the concerned IO/SHO.

(v) the petitioner shall upon his release give his mobile phone number to concerned IO/SHO and shall keep his mobile phone switch on all times.

8. In the event of there being any FIR/complaint lodged against the petitioner, it shall be open to the respondent to seek redressal by filing an application seeking cancellation of bail.

9. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and shall not influence the outcome of the trial.

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

[MANISHA BATRA]
JUDGE

16th January, 2026

Parveen Sharma

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