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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

246

CRM-M-61437-2025

Date of decision: 9th February, 2026

Nasir Mohammad

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Kamlesh, Advocate for the petitioner.

Mr. Roshandeep Singh, Assistant Advocate General, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed by the petitioner seeking grant of regular bail in case bearing FIR No. 58 dated 17.05.2024 registered under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS') at Police Station City-I, Malerkotla, District Malerkotla.

2. As per the allegations, on 17.05.2024, a secret information was received to the effect that the petitioner and co-accused Mohd. Aarif were indulging in the business of selling heroin in large quantities after procuring the same from some unknown source, and that they could be apprehended if a raid was conducted. Acting upon the said information, a raiding party was conducted, which reached at the informed place and found the petitioner and the co-accused to be in conscious possession of 315 grams of heroin kept in a

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polythene bag. Both were arrested on the spot. The investigation now stands completed, and the petitioner is facing trial for the commission of the aforesaid offences.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in the present case due to some ulterior motive and that the alleged recovery has been falsely planted upon him. It is further submitted that the trial is likely to take a considerable time as no prosecution witness has been examined so far. The petitioner has clean antecedents and is not involved in any other criminal case. His further incarceration would not serve any useful purpose. With these submissions, it is urged that the petitioner be extended the benefit of regular bail.

4. Status report and custody certificate have been filed by respondent-State. Learned State has argued that there are serious and specific allegations against the petitioner. The rigors of Section 37 of the NDPS Act are attracted in the present case. It is submitted that the petitioner has criminal antecedents as he is involved in three other cases of a similar nature. There is every likelihood of his indulging in similar offences if released on bail. Therefore, it is urged that the present petition does not deserve to be allowed.

5. This Court has heard learned counsel for the parties and have perused the record.

6. It is well-settled law that the Court, while considering an application for grant of bail, has to keep certain factors in mind such as

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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 the accused absconding or fleeing if released on bail, and reasonable apprehension of the witnesses being threatened, etc. However, at the same time, the period of incarceration is also a relevant factor to be considered while deciding whether bail should be granted to an accused charged with an offence under the provisions of the NDPS Act. The twin conditions under Section 37 of the NDPS Act are to be satisfied. The rigors of Section 37 of the NDPS Act are attracted in this case as the accusations pertain to the recovery of commercial quantity of contraband from the petitioner as well as from the co-accused. The petitioner and co-accused were found in conscious possession of a *commercial quantity* of contraband. However, the petitioner is in custody for a period of one year, eight months and eighteen days. An accused cannot be kept in custody for an indefinite period of time. The petitioner is not required for further investigation. Undoubtedly, the 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. The well settled proposition of law is that the 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 479 of BNSS which is applicable to offences under the Act. Long incarceration militates against the most precious fundamental right guaranteed under Article

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21 of Constitution and in such a situation must override the statutory embargo contained under Section 37 of the NDPS Act. No prosecution witness has been examined so far. Trial will take considerable time to conclude. The continued detention of the petitioner would not serve any useful purpose at this stage.

7. In view of the above-discussed facts and circumstances, this Court is of the considered opinion that the present petition deserves to be allowed. Accordingly, the same is allowed, and the petitioner is ordered to be released on regular bail, subject to his furnishing personal and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

8. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

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

[MANISHA BATRA]
JUDGE

9th February, 2026
Parveen Sharma

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