

In the High Court of Punjab and Haryana, at Chandigarh**Criminal Misc. No. M-65315 of 2024 (O&M)****Date of Decision: 09.02.2026**

Rakesh Kumar alias Kesha

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.Present: Mr. Anmol, Advocate
for the petitioner(s).Mr. Eklavya Darshi, Deputy Advocate General,
Punjab.**Surya Partap Singh, J.****CRM-5788-2026**

1. This is an application seeking for placing on record certain documents. For the reasons stated in the application, the same is hereby allowed and the documents (Annexures A1 to A3) annexed with the application are taken on record.

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2. This first petition for bail has been filed with regard to a case arising out of FIR No. 5 dated 10.01.2024 lodged in Police Station Special Task Force, District S.T.F. Wing, Mohali, Punjab for the commission of offence punishable under Sections 21(c), 29, 25 and 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter being referred as “the NDPS Act” only.

The above mentioned FIR came into being at the instance of

‘ASI Mohammad Sadeeq’, who had reported that on 10.01.2024 when he was heading a team of police officials deputed for usual law and order duty, at about 04.00 P.M. he received a tip-off from a reliable source. According to above named police officer, acting upon the above said information a white colour Swift car bearing registration No. PB-78-8849 was intercepted wherein ‘Rakesh Kumar alias Kesha’ (petitioner herein) and ‘Jagroop Singh alias Roop’ were travelling. According to prosecution, on body search of the above named persons 480 grams of ‘heroin’ was recovered from the possession of ‘Rakesh Kumar alias Kesha’ and 4.520 kgs. ‘heroin’ from the bag inside the car. As per prosecution, in view of above mentioned recovery of contraband the requisite formalities with regard to seizure and sealing of contraband, filing of FIR and arrest of accused were undertaken and further investigation taken up.

4. Heard.

5. It has been contended by learned counsel for the petitioner that the petitioner is innocent who has been falsely implicated in the present case, and that the petitioner has no criminal antecedents. It has also been contended by learned counsel for the petitioner that the story set-out by the prosecution is unreliable and fails to convince a prudent mind. The learned counsel for petitioner has further contended that instant case is a case wherein the head of police party was having a prior information with regard to prospective recovery of contraband, but he did not join any independent witness.

6. In addition to above, the learned counsel for petitioner has contended that the petitioner is already facing a prolonged incarceration for a

period of more than two years, and that the trial is taking place at a very slow pace as out of nineteen only, two prosecution witnesses have been examined so far. While claiming that due to delay in trial the right of speedy trial guaranteed to the petitioner is being violated, the learned counsel for the petitioner has sought for the benefit of bail for the petitioner.

7. The learned State counsel has controverted the above mentioned arguments. According to learned State counsel, in the present case the quantity of contraband recovered from the possession of petitioner comes within the ambit of commercial quantity, and that unless the twin conditions enshrined under Section-37 of NDPS Act are satisfied, the benefit of anticipatory bail cannot be afforded to the petitioner. According to learned State counsel merely on the ground of long incarceration the conditions under Section-37 of NDPS Act should not be relaxed.

8. The record has been perused carefully.

9. As far as the principles governing the benefit of bail in a case related to NDPS Act, wherein the recovery of contraband comes within the ambit of commercial quantity are concerned, the principles of law laid down by the Hon'ble Supreme Court in the case of 'Mohd. Muslim @ Hussain v. State' (NCT of Delhi)', (2023) 18 Supreme Court Cases 166 are also relevant, wherein the Hon'ble Supreme Court has 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 which is applicable to offences under the Act.

10. In this regard it is also relevant to mention here that the Hon'ble Supreme Court of India in the case of 'Man Mandal 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 1109, extended the benefit of bail to the accused, who had been incarcerated for a period of almost 2-3 years and the trial was likely to take considerable time. The above-mentioned benefit has been given by observing that prolonged incarceration generally militates 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.

11. In addition to above, in a recently pronounced verdict in the case of 'Santosh Pawar Vs. State of Chhattisgarh & Another' Criminal Appeal No.4883/2025 decided on 14.11.2025, the Hon'ble Supreme Court observed that rigors 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.

12. 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.

13. In the case of ‘Ismail Khan @ Pathan vs. State of Rajasthan’ Criminal Appeal No.4911 of 2025 decided on 18.11.2025 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 two years and eight months of the accused.

14. The similar benefit has been taken in another appeal i.e. ‘Ebrahim @ Ibrahim SK vs. The State of West Bengal’ Special Leave Petition (Criminal) No.15699 of 2025 decided on 14.11.2025 and in the case of ‘Pamesh Arora vs. UT Chandigarh’ Criminal Appeal No.4872 of 2025 decided on 14.11.2025.

15. In the case of ‘Hasanujjaman & Others v. The State of West Bengal’ [Special Leave Petition (Criminal) No.3221 of 2023, decided on 04.05.2023], the benefit of bail has been accorded by the Hon’ble Supreme Court of India to an accused, who was found in the possession of 115 bottles of phensedyl, after considering that he was in custody for a period of about one year and three months. It has been further observed by the Hon’ble Supreme Court of India in the above mentioned case that ‘the investigation is complete; charge-sheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of

Section-37 of NDPS Act’.

16. Similarly, in the case of ‘Nandlal Mondal @Abhay Mondal V/s The State of West Bengal’ [Special Leave Petition (Criminal) No.12788/2023, decided on 03.01.2024], the Hon’ble Supreme Court of India has observed that the benefit of bail was afforded to the accused, who was found in possession of 10,000 ml of codeine phosphate, after a gap of one and a half year by considering that conclusion of trial would take long time.

17. If the facts and circumstances of the present case are analyzed in the light of above-mentioned principles of law, it transpires that:-

- i) that the petitioner is already in custody for a period more than two years;
- ii) that except one case under the NDPS Act, the petitioner has no criminal antecedents;
- iii) that the trial is not likely to be concluded in near future as out of nineteen, only two prosecution witnesses have been examined so far;
- iv) that there is a question qua the authenticity with regard to the claim of prosecution of the recovery of contraband from the possession of petitioner, as despite prior information no independent witness was joined;
- vi) that nothing is left to be recovered from the possession of petitioner;
- vii) that detention of petitioner in judicial lock-up is not likely to serve any purpose;

- viii) that there is nothing on record to show that if released on bail, the petitioner may tamper with the evidence or influence the witnesses; and
- ix) that there is nothing on record to show that if released on bail, the petitioner will not co-operate/participate in the trial.

18. With regard to the legal aspect involved in the instant case, it is relevant to mention that the Hon'ble Supreme Court in the case of *Dataram v. State of Uttar Pradesh and Another* (2018) 3 Supreme Court Cases 22, has observed that "a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity

to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.”

19. The principles laid down by the Hon’ble the Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of Investigation* (2022) 10 Supreme Court Cases 51, are also relevant in this case. In the above mentioned case, it has been observed that “the rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.”

20. Recently, in the case of *Tapas Kumar Palit v. State of Chhattisgarh*, 2025 SCC Online SC 322 the Hon’ble Supreme Court of India has observed that “if an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed.” It has also been observed by the Hon’ble Supreme Court of India in the above mentioned case that “delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.”

21. To elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as mandated by Hon'ble Apex court in Balwinder Singh versus State of Punjab and Another 2024 SCC Online SC 4354.

22. If the cumulative effect of all the above mentioned factors, involved in the instant case, is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail, and that the present petition deserves to be allowed.

23. Accordingly, without commenting anything on the merits of the case, the present petition is hereby **allowed**. The petitioner is hereby ordered to be released on bail on furnishing personal bond and surety bond(s) to the satisfaction of learned trial Court. However, the above said concession shall be subject to following conditions:-

- a) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority;
- b) that the petitioner shall at the time of execution of bond, furnish the address to the Court concerned and shall notify the change in address to the trial Court, till the conclusion of trial; and
- c) that the petitioner shall not leave India without prior

permission of the trial Court.

24. It is, however, made clear that any observation made here-in-
above is only for the purpose of deciding the present petition and the same
shall have no bearing on the merits of the case.

(Surya Partap Singh)
Judge

February 09, 2026
“DK”

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