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

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**CRM-M No.64726 of 2025
Date of Decision: 10.02.2026**

Tousief Hussain alias Tousif Hussain
alias Syed Tousief Hussain

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vipin Mahajan, Senior Advocate with
Ms. Tejinder Kaur, Advocate,
for the petitioner.

Mr. Roshandeep Singh, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The present one is the second petition as filed by the petitioner under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking concession of regular bail in case bearing FIR No.47 dated 17.04.2024 registered under Section 21, 27-A and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Section 201 of IPC, at Police Station Sujampur, District Pathankot. His previous petition had been dismissed by this

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Court vide order dated 22.07.2025 by making the following observations:-

“7. Though the petitioners have been nominated in this case on the basis of the disclosure statements suffered by abovenamed co-accused, however, a perusal of the status reports reveals that they were actively involved in commission of subject crime. Huge recovery of heroin has been effected in this case. Petitioners Tousief Hussain and Ishfaq Mugal are alleged to have procured the heroin from Srinagar. Drug money of Rs. 3 Lakhs has also been recovered from them. Petitioner Jaspreet Singh facilitated the commission of crime by giving his car to the co-accused. Not only this, he had given an amount of Rs. 24 Lakhs to the co-accused, which was used to purchase the recovered contraband. The allegations against the petitioners are quite serious in nature. Some of the co-accused are still at large. Trial is going on at a proper pace and there is nothing on record to show that there would be any undue delay in conclusion of the same. The apprehension expressed by learned State counsel that if the petitioners are released on bail, they can abscond or indulge in similar offences, can also not be stated to be unfounded keeping in view the manner in which the subject crime has been committed. Keeping in view the discussion as made above, the quantity of recovered contraband, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioners do not deserve to be granted benefit of regular bail, at this stage. Hence, the petitions are dismissed.”

2. It is argued by learned counsel for the petitioner that after dismissal of his previous petition, a period of more than six months has

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passed. However, the trial has not progressed much further as only 03 out of 30 prosecution witnesses have been examined so far. There are no chance of conclusion of trial in near future. Each day spent by him in custody has entitled him to seek concession of bail. It is, therefore, argued that the petition deserves to be allowed.

3. Status report has been filed. It is argued by learned Assistant Advocate General, Punjab that keeping in view the gravity of the allegations as levelled against the petitioner, he does not deserve to be extended the benefit of bail.

4. This Court has heard the rival submissions made by learned counsel for the parties.

5. Only 03 out of 30 prosecution witnesses have been examined so far. Meaning thereby that there are no chances of conclusion of the trial in near future. The allegations make out a prima facie case for commission of subject offence against him. The petitioner is in custody for a period of about 01 year, 09 months and 10 days. 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

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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 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,

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the constitutional principles must override the statutory embargo contained under Section 37 of the NDPS Act.

6. 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 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.

7. 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, 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.

8. In the case of ***Ismail Khan @ Pathan vs. State of Rajasthan Crminal Appeal No.4911 of 2025*** with regard to recovery of commercial quantity of narcotic substance the Hon'ble Supreme Court accorded the

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benefit of bail to the accused in view of prolonged incarceration for a period of 02 years and 08 months of the accused.

9. The similar benefit has been taken 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*.

10. 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 about 01 year, 09 months and 10 days, the trial is not likely to be concluded in near future as 03 out of 30 prosecution witness have been examined; 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.

11. 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 learned trial Court/CJM/Duty Magistrate concerned 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

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hearing except when his presence has been exempted by the trial Court. He shall surrender his passport, if any, furnish details of his cell phone and Aadhaar card, and shall not change his mobile number(s) during the pendency of the trial.

12. 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.

10.02.2026
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(MANISHA BATRA)
JUDGE

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