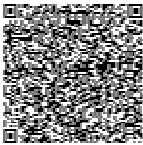


2026:PHHC:001118



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CRM-M-66117-2025

Davinder Kumari @ Renu
....Petitioner
versus
State of Punjab
....Respondent

Date of decision: January 09, 2026
Date of Uploading: January 12, 2026

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL
Present:- Mr. Ruhani Chadha, Advocate for the petitioner.
Mr. Gaurav Gurcharan Singh Rai, Senior DAG Punjab.

SUMEET GOEL, J. (ORAL)

Present petition has been filed under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’) for grant of regular bail to
the petitioner in case bearing FIR No.147 dated 26.07.2024, registered for the
offences punishable under Sections 21 & 22 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (for short ‘NDPS Act’), at Police Station
Mahilpur, District Hoshiarpur.

2. The gravamen of allegations against the petitioner is that the
petitioner is accused of being involved in an FIR pertaining to NDPS Act
involving alleged recovery of 5.18 grams of Heroin, 100 intoxicant tablets
color orange containing 9.3 grams (100x93 mg per tablet/ 1000) of active salt
‘Etizolam’ from the petitioner.

3. Learned counsel for the petitioner has iterated that the petitioner was initially arrested on 26.07.2024, thereafter, she was granted concession of interim bail vide order dated 26.09.2024 as the FSL report was not received at that point of time. Learned counsel has argued that upon receipt thereof, the petitioner herself surrendered on 04.03.2025 and is in continuous custody since then. Learned counsel for the petitioner has further submitted that mandatory provisions of the NDPS Act have not scrupulously been complied with, and thus, the prosecution case suffers from inherent defects. Learned counsel for the petitioner has iterated that the trial is delayed and the liability thereof cannot be fastened upon the petitioner. Learned counsel has further iterated that the petitioner has suffered incarceration for more than 01 year. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition by arguing that the allegations raised against the petitioner are serious in nature and, thus, the petitioner does not deserve the concession of the regular bail. Learned State counsel has further submitted that the instant bail plea is barred by the rigors of Section 37 of the NDPS Act, and thus, the same ought to be dismissed. Learned State counsel seeks to place on record custody certificate dated 09.01.2026, in the Court today, which is taken on record.

5. I have heard counsel for the rival parties and have gone through the available records of the case.

6. The petitioner was initially arrested on 26.07.2024, thereafter, he was granted concession of interim bail vide order dated 26.09.2024 on account of non-receipt of FSL report; thereafter, upon receiving of FSL report, the petitioner is stated to have surrendered herself on 04.03.2025 and is in continuous custody since then. Investigation was carried out and the challan has

been presented on 20.02.2025. Total 10 prosecution witnesses have been cited, out of which, 03 have been examined and 02 have been given up till date. Indubitably, conclusion of the trial will take long time. The rival contentions raised at Bar give rise to debatable issues, which shall be ratiocinated upon during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, *lest* it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

6.1. A perusal of the *zimni* orders passed by the trial Court, brought forth by the petitioner, indicates that the trial is indeed procrastinating and folly thereof cannot be saddled upon the petitioner. As per custody certificate dated 09.01.2026 filed by the learned State counsel, the petitioner has already suffered incarceration for a period of 01 year & 08 days. Further, as per the said custody certificate, the appellant is stated to be involved in other FIR(s). However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the appellant in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012 (1) RCR (Criminal) 586***; a Division Bench judgment of the Hon'ble Calcutta High Court in case of ***Sridhar Das v. State, 1998 (2) RCR (Criminal) 477*** & judgments of this Court in CRM-M No.38822-2022 titled as ***Akhilesh Singh v. State of Haryana***, decided on 29.11.2021, and ***Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191***. In

this view of the matter, the rigor imposed under Section 37 of the NDPS Act stands diluted in light of the Article 21 of the Constitution of India.

6.2. This Court in a judgment titled as *Kulwinder versus State of Punjab* passed in **CRM-M-64074-2024** (2025:PHHC:002695); after relying upon the *ratio decidendi* of the judgments of the Hon'ble Supreme Court in Hussainara Khatoon vs. Home Secy., State of Bihar (1980) 1 SCC 81; Abdul Rehman Antulay vs R.S. Nayak (1992) 1 SCC 225; Javed Gulam Nabi Shaikh vs. State of Maharashtra and another, 2024(3) RCR (Criminal) 494; Mohd Muslim @ Hussain vs. State (NCT of Delhi) reported as 2023 INSC 311; Criminal Appeal No.245/2020 dated 07.02.2020 titled as "Chitta Biswas Alias Subhas vs. The State of West Bengal"; "Nitish Adhikary @ Bapan vs. The State of West Bengal", Special Leave to Appeal (Crl.) No.5530-2022 dated 22.08.2022 titled as "Mohammad Salman Hanif Shaikh vs. The State of Gujarat"; Criminal Appeal No.1169 of 2022 dated 05.08.2022 titled as Gopal Krishna Patra @ Gopalrusma vs. Union of India, and Ankur Chaudhary vs. State of Madhya Pradesh, 2024(4) RCR (Criminal) 172; has held, thus:

"7.8. The right to a speedy and expeditious trial is not only a vital safeguard to prevent undue and oppressive incarceration; to mitigate anxiety and concern accompanying the accusation as well as to curtail any impairment in the ability of an accused to defend himself, but there is an overarching societal interest paving way for a speedy trial. This right has been repeatedly actuated in the recent past and the ratio decidendi of the above-referred to Supreme Court's judgments have laid down a series of decisions opening up new vistas of fundamental rights. The concept of speedy trial is amalgamated into the Article 21 as an essential part of the fundamental right to life and liberty, guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed at the time of the arrest of the accused and consequent incarceration which continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result due to impermissible and avoidable delay since the time of the commission of the offence till the criminal proceedings consummate into a finality, could be averted. The speedy trial, early hearing and quick disposal are sine qua non of criminal jurisprudence. The overcrowded Court-dockets, the heavy volume of work and the resultant pressure on the prosecution and the Police, indubitably keeps the entire criminal jurisprudential mechanism under stress and strain. However, this

cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. It does not serve any credit to the criminal justice system, rather it makes for a sad state of affairs. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the Court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend himself. It goes without saying that the consequences of pre-trial detention are grave. Accused, presumed innocent, till proven otherwise, are subjected to psychological and physical deprivations of jail-life, usually under onerous conditions. Equally important, the burden of detention of such an accused frequently falls heavily on the innocent members of his family.

There is yet another aspect of the matter which deserves consideration at this stage. The allegations in the present case relate to accused being involved in an FIR relating to commercial quantity of contraband under the NDPS Act, 1985. While considering a bail petition in a case involving commercial quantity, the Court has to keep in mind the rigours enumerated under Section 37 of NDPS Act, 1985 which mandates that Courts can grant bail to an accused only after hearing the public prosecutor and after having satisfied itself of twin conditions which are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not likely to commit any offence while on bail. The stringent rigours of Section 37 of the NDPS Act, 1985 must be meticulously scrutinized against the backdrop of accused's fundamental right to a speedy trial. The right to life and personal liberty cannot be rendered nugatory by unwarranted delays in the judicial process, particularly where such delay(s) is neither attributable to the accused nor justified at the end of the prosecution by cogent reasons. An individual cannot be kept behind bars for an inordinate period of time by taking refuge in rigours laid down in Section 37 of the NDPS Act, 1985. The legislature in its wisdom, in order to ensure speedy and timely disposal of the cases under the Act, has provided for the constitution of special Courts under Section 36-A of the Act. However, this Court cannot turn Nelson's eye to the protracted delays and systematic inefficiency that frustrate this legislative purpose. A Court of law is duty-bound to ensure that it does not become complicit in violation of an individual's fundamental rights, notwithstanding anything contained in a statute. While dealing with bail petition in a case governed by the rigours of Section 37 of the NDPS Act, 1985, the Court must strike a judicious balance between the legislative intent to curb the menace of drugs and the sacrosanct right of the accused to a fair and expeditious trial. Prolonged incarceration, without justifiable cause, risks transforming pre-trial detention into punitive imprisonment, an outcome antithetical to the principle of justice and equity.

Ergo, the unequivocal inference is that where the trial has failed to conclude within a reasonable time, resulting in prolonged incarceration, it militates against the precious fundamental rights of life and liberty granted under the law and, as such, conditional liberty overriding the statutory embargo created under Section 37 of the NDPS Act, 1985 ought to be considered as per facts of a given case. In other words, grant of bail in a case pertaining to commercial quantity, on the

ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985.”

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the Ld. concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/Duty Magistrate, the petitioner shall remain bound by the following conditions:

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent herself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit her passport, if any, with the trial Court.
- (vi) The petitioner shall give her cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change her cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.
- (viii) The petitioner shall submit, on the first working day of every month, an affidavit, before the concerned trial Court, to the effect that she has not been involved in commission of any offence after being released on bail. In case the petitioner is found to be involved in any offence after her being enlarged on bail in the present FIR, on the basis of her affidavit or otherwise, the State is mandated to move, forthwith, for cancellation of her bail which plea, but of course, shall be ratiocinated upon merits thereof.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

January 09, 2026
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No