



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

CRM-M-67335-2025

Date of decision : 24.02.2026

Birma @ Lanka

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Kuldeep Singh Siwach, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

1. Petitioner has approached this Court by way of filing the present petition praying for grant of regular bail to her in case FIR No.100 dated 12.03.2025, under Sections 20(C), 27-A of the NDPS Act, registered at Police Station City Tohana, District Fatehabad.

2. Succinctly, facts of the case are that the police party while on patrolling on 12.03.2025, received a secret information to the effect that Birma @ Lanka (petitioner) wife of Rajinder who was living as a tenant in Indira Colony, Tohana, was involved in selling of the drugs in her rented house. If the raid is conducted, then Diacetylmorphine (Heroin) or Ganja could be recovered from her rented room. On receiving the secret information, the police reached at the house of the petitioner as disclosed. A woman was found standing near one plastic bag inside the main gate. On seeking the police, she tried to drag the plastic bag inside the room however, she was apprehended and on asking, she disclosed her name as Birma @ Lanka. Notice was issued and the Gazetted Officer was called. On suspicion, the search of the bag was conducted and 21.496 kgs of *ganja* was recovered. She failed to produce any license regarding the



possession of the same. Thus, the FIR was registered. On registration of the FIR, investigation commenced. The samples taken were sent to the FSL. On completion of the investigation, challan was presented and on framing of the charges, trial commenced. Petitioner was arrested on 12.03.2025. She approached the Court of learned Special Judge, Fast Track under NDPS Act, Fatehabad however, after hearing counsel for the parties, the same was declined vide order dated 16.09.2025. Hence, the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in this case. He has submitted that the case of the prosecution is based on secret information however, there is violation of provisions of Section 42 of the NDPS Act. He has further submitted that there is also violation of provisions of Section 50 of the NDPS Act. He has submitted that the alleged place of occurrence is a rented accommodation and thus, conscious possession of the petitioner is also not proved. To buttress his arguments, learned counsel for the petitioner has submitted that as per the statute, the quantity above 20 kg is commercial in nature whereas, the alleged recovery from the petitioner is 21.496 kg which is marginally above the commercial quantity. He submits that the false implication of the petitioner is evident from the fact that no independent witness has been joined by the investigating agency at the time of recovery. He submits that though the petitioner is involved in two other cases however, she is on bail in those cases.

4. Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that petitioner was specifically named in the secret information. The recovery has been



effected from the house where she was living as a tenant. He submits that the recovered contraband is commercial quantity thus, provisions of Section 37 of the NDPS Act are attracted. He on instructions, has submitted that out of 21 prosecution witnesses, 03 witnesses have been examined. He has placed on record the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the alleged recovery is effected from the rented accommodation. As submitted, the recovered quantity of contraband is 21.496 kgs of *ganja* which includes the weight of sack as well and the commercial quantity is above 20 kgs. It is debatable whether the quantity recovered is commercial or non-commercial in nature and the same would lie within the domain of the learned trial Court. As submitted, out of 21 prosecution witnesses, 03 witnesses have been examined. The custody certificate filed by the State shows that the petitioner has undergone incarceration of 11 months and 09 days as on 21.02.2026. It further reflects that though the petitioner is involved in two other cases, however, she is on bail in those cases.

6. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260**, this Court is of the opinion that the case of the petitioner is covered by the ratio laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in



punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

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21it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

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23. *There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.'*

7. The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel

for the petitioner succeeds in making out a case for grant of regular bail.

8. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

24.02.2026
m.sharma

(RAJESH BHARDWAJ)
JUDGE

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