



CRM-M-73993-2025

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

(251)

CRM-M-73993-2025

Date of Decision: 14.01.2026

Date of uploading: 15.01.2026

Krishan Kumar

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE SUMEET GOEL.

Present:- Mr. R.P. Saini, Advocate for the petitioner.

Mr. B.S. Sra, Addl. A.G., Punjab.

SUMEET GOEL.J (Oral)

1. 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 FIR No.171 dated 31.10.2025 registered under Sections 21-B/27-A/29/61/85 of NDPS Act at Police Station Sultanwind, District Amritsar.

2. The gravamen of the FIR in question is that the petitioner is an accused of being involved in FIR pertaining to NDPS Act involving 20 grams of heroin and Rs.60,000/- drug money allegedly recovered from him.

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 31.10.2025. Counsel has submitted that the petitioner has been falsely implicated in the FIR in question. Learned counsel has further

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submitted that, the mandatory provisions of NDPS Act have not been scrupulously complied with. Counsel has submitted that the contraband allegedly recovered from the petitioner is 20 grams of heroin which does not fall in the category of commercial quantity. Learned counsel has submitted that no tangible basis is available with the prosecution, at this juncture, who termed the recovery of Rs.60,000/- from the petitioner, as drug money. Learned counsel has further submitted that the petitioner is a man of clean antecedents and thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition by arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 13.01.2026 in Court, which is taken on record. Learned State counsel has further iterated that the petitioner is accused of offence pertaining to commercial quantity under the NDPS Act, and thus, his bail petition is barred in view of the Section 37 of the Act.

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

6. The petitioner was arrested on 31.10.2025 and investigation is underway. Culmination of the trial as also of the investigation will take its own time. It is not dispute that the contraband recovered from the petitioner is 20 grams of heroin which is not commercial in nature and therefore, the rigors of Section 37 of NDPS Act would not apply in so far as recovery of contraband is concerned. State has sought to remove Section 37 of the



NDPS Act by terming the recovery of Rs.60,000/- from the petitioner as drug money, however, the only basis thereof available, at this juncture, is the confessional statement of the petitioner, veracity whereof shall be gone into during the trial.

7. In the factual milieu of the case, this Court is of the considered opinion that fetters of Section 37 of the NDPS Act have been met with so as to enlarge the petitioner on bail. It would be apposite to refer a judgment of this Court in **Jaswinder Singh alias Kala versus State of Punjab** passed in **CRM-M-33729-2025** (2025:PHHC:089161); the relevant whereof reads thus:-

“14. As a sequitur to above-said rumination, the following postulates emerge:

(I) (i) A bail plea on merits; in respect of an FIR under NDPS Act of 1985 involving offence(s) under Section 19 or Section 24 or Section 27-A thereof and for offence(s) involving commercial quantity; is essentially required to meet with the rigour(s) of Section 37 of NDPS Act.

(ii) The rigour(s) of Section 37 of NDPS Act do not apply to a bail plea(s) on medical ground(s), interim bail on account of any exigency including the reason of demise of a close family relative etc.

(iii) The rigour(s) of Section 37 of NDPS Act pale into oblivion when bail is sought for on account of long incarceration in view of Article 21 of the Constitution of India i.e. where the bail-applicant has suffered long under-trial custody, the trial is procrastinating and folly thereof is not attributable to such bail-applicant.

II. The twin conditions contained in Section 37(1)(b) of NDPS Act are in addition to the conditions/parameters contained in



Cr.P.C./BNSS or any other applicable extant law.

III. The twin conditions contained in Section 37(1)(b) of NDPS Act are cumulative in nature and not alternative i.e. both the conditions are required to be satisfied for a bail-plea to be successful.

IV. For consideration by bail Court of the condition stipulated in Section 37(1)(b)(i) of NDPS Act i.e. “there are reasonable grounds for believing that he is not guilty of such offence”:

(i) The bail Court ought to sift through all relevant material, including case-dairy, exclusively for the limited purpose of adjudicating such bail plea.

(ii) Such consideration, concerning the assessment of guilt or innocence, should not mirror the same degree of scrutiny required for an acquittal of the accused at the final adjudication and culmination of trial.

(iii) Plea(s) of defence by applicant-accused, if any, including material/documents in support thereof, may be looked into by the bail-Court while adjudicating such bail plea.

V. For consideration of the condition stipulated in Section 37(1)(b)(ii) i.e. ‘he is not likely to commit any offence while on bail’:

(i) The word ‘likely’ ought to be interpreted as requiring a demonstrable and substantial probability of re-offending by the bail-applicant, rather than a mere theoretical one, as no Court can predict future conduct of the bail-applicant.

(ii) The entire factual matrix of a given case including the antecedents of the bail-applicant, role ascribed to him, and the nature of offence are required to be delved into. However, the involvement of bail-applicant in another NDPS/other offence cannot ipso facto result in the conclusion of his propensity for committing offence in the future.

(iii) The bail-Court may, at the time of granting bail, impose



upon the applicant-accused a condition that he would submit, at such regular time period/interval as may stipulated by the Court granting bail, an affidavit before concerned Special Judge of NDPS Court/Illaqa (Jurisdictional) Judicial Magistrate/concerned Police Station, to the effect that he has not been involved in commission of any offence after being released on bail. In the facts of a given case, imposition of such condition may be considered to be sufficient for satisfaction of condition enumerated in Section 37(1)(b)(ii).

VI. There is no gainsaying that the nature, mode and extent of exercise of power by a Court; while satisfying itself regarding the conditions stipulated in Section 37 of NDPS Act; shall depend upon the judicial discretion exercised by such Court in the facts and circumstances of a given case. No exhaustive guidelines can possibly be laid down as to what would constitute parameters for satisfaction of requirement under Section 37 (ibid) as every case has its own unique facts/circumstances. Making such an attempt is nothing but a utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such matter.”

8. As per custody certificate dated 13.01.2026 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than 02 months and is not shown to be involved in any other case. Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

9. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/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 himself on any date before the trial.
 - (iv) The petitioner shall not commit any offence while on bail.
 - (v) The petitioner shall deposit his passport, if any, with the trial Court.
 - (vi) The petitioner shall give his cell-phone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqqa 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 he 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 his being enlarged on bail in the present FIR, on the basis of his affidavit or otherwise, the State is mandated to move, forthwith, for cancellation of his bail which plea, but of course, shall be ratiocinated upon merits thereof.
10. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/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.
11. Ordered accordingly.



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

(SUMEET GOEL)
JUDGE

14.01.2026

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No