



2026 INSC 411

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. _____ OF 2026
(ARISING OUT OF SLP (CRL.) NO.5020 OF 2026)**

STATE OF PUNJAB ... APPELLANT(S)

VERSUS

SUKHWINDER SINGH @ GORA ... RESPONDENT(S)

ORDER

AUGUSTINE GEORGE MASIH, J.

1. Leave granted.
2. The instant appeal is directed against the judgment and order dated 18.02.2026 passed by the High Court of Punjab and Haryana in CRM-M No. 70945 of 2025, whereby the petition preferred by the respondent under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, "the BNSS") seeking regular bail in connection with FIR No. 06 of 2024 dated

10.01.2024 registered at Police Station Khalra, District Tarn Taran, for offences punishable under Sections 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, “the NDPS Act”), came to be allowed.

3. The facts, briefly stated, are that on 10.01.2024, during a vehicle check at a police barricade on the Canal Road near Village Veeram in District Tarn Taran, a Mahindra XUV-300 car bearing registration No. UP-15-DD-6521 was intercepted. The two occupants, the co-accused Gurjit Singh @ Geetu (driver) and the respondent herein, were apprehended. Upon search conducted, total three packets of heroin were recovered, two weighing 957 grams from the respondent and one weighing 508 grams from the co-accused, aggregating to 1.465 kilograms, admittedly a “commercial quantity” under the NDPS Act. The chargesheet came to be filed on 21.06.2024 and charges were framed by the Trial Court on 20.07.2024 under Sections 21(c) and 29 of the NDPS Act.

4. The respondent's first regular bail application under Section 483 of the BNSS preferred before the High Court, being CRM-M No. 58082 of 2025, came to be dismissed as withdrawn on 27.10.2025. The respondent thereafter filed the second petition under Section 483 of the BNSS, being CRM-M No. 70945 of 2025, which has been allowed by the impugned order.

5. By the impugned order, the High Court enlarged the respondent on regular bail recording, in paragraph 8 thereof, that the respondent had remained in custody for 2 years, 1 month and 2 days; that he was "not involved in any other case"; that charges had been framed on 20.07.2024 but only 2 prosecution witnesses out of 24 had been examined; that the trial was likely to take considerable time; that further incarceration would be violative of his right under Article 21 of the Constitution; and that, in the words of the High Court, "the rigors of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial".

6. Learned Senior Counsel for the petitioner-State assailed the impugned order on the ground that the recovery being admittedly of commercial quantity, the rigors of Section 37(1)(b)(ii) of the NDPS Act stood squarely attracted, and that the High Court was bound to record satisfaction on the cumulative twin conditions under that section. The recording of such satisfaction, it was submitted, is the *sine qua non* for the grant of bail in offences involving commercial quantity, and the impugned order is devoid of any such finding. Reliance was placed on *Narcotics Control Bureau v. Kashif*¹, *State of Meghalaya v. Lalrintluanga Sailo and Another*², and *Union of India v. Ajay Kumar Singh*³. Reliance was further placed on the observations of this Court in *Parwinder Singh v. State of Punjab*⁴, that, having regard to the drug menace in the State of Punjab, the Courts ought to be highly circumspect while granting bail in such cases.

¹ (2024) 11 SCC 372

² (2024) 15 SCC 36

³ 2023 SCC OnLine SC 346

⁴ Criminal Appeal No.3931 of 2023 @ SLP (Crl.) No. 12601 of 2023

7. Per contra, learned Senior Counsel for the respondent supported the impugned order. It was submitted that the respondent remained in custody since 10.01.2024; that out of 24 prosecution witnesses cited, only 2 stand examined despite charges having been framed on 20.07.2024 and the trial is likely to take considerable time. The High Court has rightly held that the right to speedy trial under Article 21 cannot be defeated by mechanical application of Section 37 of the NDPS Act. It was further submitted that the mandatory provisions of Sections 42, 50 and 52 of the NDPS Act stand violated; that no independent witness was joined despite ample opportunity; that all prosecution witnesses are police personnel; that the respondent has but a single criminal antecedent of the year 2020 under the Arms Act, and none under the NDPS Act; that the grounds of arrest in writing were not supplied to the respondent in compliance with *Mihir Rajesh Shah v. State of Maharashtra and Another*⁵ as followed in *Dr. Rajinder Rajan v.*

⁵ (2026) 1 SCC 500

*Union of India*⁶ and that the State has placed nothing on record to suggest misuse of bail or violation of any condition imposed by the impugned order. Parity with the co-accused, similarly enlarged on bail, was also pressed.

8. We have heard the learned Senior Counsel for the parties at length and perused the record.
9. It is well-settled that in matters involving recovery of contraband in commercial quantity, the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation merely on the ground that the accused has undergone prolonged incarceration during the pendency of trial. The provision casts upon the Court a duty to record, before enlarging an accused on bail, its satisfaction on two cumulative conditions, first, that there exist reasonable grounds for believing that the accused is not guilty of the offence charged; and second, that he is not likely to commit any offence while on bail. The recording of such

⁶ Criminal Appeal No.1700 of 2026 @ SLP (Crl.) No.3326 of 2026 dated 01.04.2026

satisfaction is not a mere formality but a mandatory pre-condition, the non-observance of which vitiates the grant of bail. This Court, in *Kashif* (supra), has held in no uncertain terms that the recording of satisfaction on the twin conditions under Section 37 is mandatory and not merely directory, and that an order granting bail without such recorded satisfaction stands vitiated and cannot be sustained. The same view stands reiterated in *Lalrintluanga Sailo* (supra).

10. The impugned order, on its own showing, does not record the satisfaction mandated under Section 37(1)(b)(ii) of the NDPS Act. Far from recording such satisfaction, the High Court has gone on to observe that 'the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial.' Such an approach is plainly contrary to the settled law laid down by this Court and deserves to be set aside on this ground alone. The right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious Constitutional right. That said, in matters governed by a special

enactment such as the NDPS Act, particularly where the recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override it. The constitutional right under Article 21 and the special provision of law under Section 37, NDPS Act are to be read harmoniously and not placed in opposition to each other. The High Court, by failing to record its satisfaction on the twin conditions under Section 37, has in this Court's view, committed an error.

11. On a perusal of the record, this Court is further constrained to observe that the impugned order reflects a lack of adequate consideration of the record. In paragraph 12 of the bail petition preferred before the High Court, the respondent himself admitted that 'apart from the present case one more case FIR is there against him'. The High Court, however, in paragraph 8 of the impugned order, has recorded that the respondent is 'not involved in any other case',

and has expressly counted that recording among the considerations weighing in favour of the grant of bail. The recording of the High Court and the admission by the respondent are irreconcilable. A Court while considering the prayer for bail under a special statute and attracting Section 37 of the NDPS Act could not have granted relief on grounds directly at odds with the admissions made by the respondent in the very petition before it. The said order being contrary to facts is flawed that speaks for itself as it appears that this fact was not brought to the notice of the High Court.

12. Equally, the impugned order is conspicuously silent on the fact that the petition before the High Court was the second petition under Section 483 of the BNSS, the first being CRM-M No. 58082 of 2025, having been dismissed as withdrawn on 27.10.2025. A Court entertaining a successive bail petition under a special statute is bound to refer to the fate of the earlier petition and to record what change in circumstances justifies a fresh consideration. The impugned

order is silent on this aspect, which ought to have found express mention therein. Especially when the time gap between the earlier dismissal of the application for bail and the one in question before this Court now is quite less.

13. The manner in which the respondent disclosed CRM-M No. 58082 of 2025 in paragraph 14 of his bail petition before the High Court also does not escape the attention of this Court. The disclosure stops at the case number; it neither states what the case was, nor what became of it. A disclosure so worded, in a matter where the Court is called upon to record its satisfaction on the twin conditions under Section 37 of the NDPS Act, falls well short of the candour that an applicant seeking the exercise of discretionary jurisdiction is bound to observe. It is a settled principle that he who invokes the discretion of the Court must approach it with clean hands and place the full picture before it. A disclosure that is calculated to obscure rather than illuminate cannot, in the eye of the law, be regarded as a disclosure at all. The possibility of

the factum of dismissal of the earlier bail application and that too on 27.10.2025 having escaped the notice of the Court cannot be ruled out.

14. For the reasons aforesaid, this Court is of the view that the impugned order does not stand to scrutiny and is liable to be set aside. The submissions advanced on behalf of the respondent, going to the merits of the prosecution case are all matters which would fall for consideration of the appropriate Court as and when the application for bail is filed and grounds taken up therein. This Court refrains from expressing any opinion thereon as these were neither taken into consideration nor pressed as is apparent from the impugned order.
15. In the light of the foregoing, the appeal is allowed. The impugned judgment and order dated 18.02.2026 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 70945 of 2025 is set aside.

16. The respondent is directed to surrender before the Trial Court within one week from the date of this order. It will be open to the respondent to apply afresh for regular bail before the competent Court on surrender.
17. Pending application(s), if any, shall stand disposed of.

.....**J.**
[**SANJAY KAROL**]

.....**J.**
[**AUGUSTINE GEORGE MASIH**]

NEW DELHI;
APRIL 24, 2026.

BNSS”), seeking regular bail in connection with FIR No. 06 of 2024 dated 10.01.2024 registered at Police Station Khalra, District Tarn Taran, for offences punishable under Sections 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, “the NDPS Act”), came to be allowed.

3. The prosecution case, in brief, is that on 10.01.2024, in the course of a naka operation near Village Veeram in District Tarn Taran, a Mahindra XUV-300 bearing registration No. UP-15-DD-6521 was stopped and searched. The respondent, who was driving the vehicle, and the co-accused Sukhwinder Singh @ Gora, were apprehended on the spot. Upon the search conducted, heroin was recovered from the possession of both the accused, 508 grams from the respondent and 957 grams from the co-accused Sukhwinder Singh, the aggregate being 1.465 kilograms, which is admittedly a “commercial quantity” for the purposes of the NDPS Act. The chargesheet was filed on 21.06.2024 and, on 20.07.2024, charges came

to be framed by the learned Trial Court under Sections 21(c) and 29 of the NDPS Act.

4. The respondent's first regular bail application under Section 483 of the BNSS preferred before the High Court, bearing CRM-M No. 30865 of 2025, came to be dismissed on 27.08.2025. The respondent thereafter filed the second petition under Section 483 of the BNSS, being CRM-M No. 72303 of 2025, which has been allowed by the impugned order.
5. By the impugned order, the High Court allowed the bail application of the respondent by recording in paragraph 8 thereof that the respondent had been in custody for 2 years, 1 month and 2 days; that he was on bail in other case ; that the co-accused stood enlarged on bail; that charges had been framed on 20.07.2024 but only 2 prosecution witnesses out of 24 had been examined and that the trial was likely to take considerable time and further incarceration would be violative of his right under Article 21 of the Constitution and "the

rigors of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial”. On the strength of these considerations, the High Court proceeded to enlarge the respondent on regular bail.

6. Learned Senior Counsel for the petitioner-State urged that the recovery being of commercial quantity, the bar under Section 37(1)(b)(ii) of the NDPS Act operated in full rigour, and that the High Court was required to record its satisfaction on the twin cumulative conditions laid down in the provision. It was submitted that the recording of such satisfaction is a jurisdictional pre-condition and not a mere formality, and that the failure to do so renders the impugned order liable to interference by this Court. Reliance was placed on *Narcotics Control Bureau v. Kashif*¹, *State of Meghalaya v. Lalrintluanga Sailo and Another*² and *Union of India v. Ajay Kumar Singh*³. Further reliance was placed on the observations of this Court in

¹ (2024) 11 SCC 372

² (2024) 15 SCC 36

³ 2023 SCC OnLine SC 346

*Parwinder Singh v. State of Punjab*⁴, that, regard being had to the drug menace afflicting the State of Punjab, the Courts ought to be highly circumspect while granting bail, particularly where the applicant bears an antecedent.

7. Learned Senior Counsel for the respondent, on the other hand, submitted in support of the impugned order that the respondent has been in custody since 10.01.2024; that although charges came to be framed on 20.07.2024, only 2 out of 24 prosecution witnesses have been examined till date and the trial is unlikely to conclude in the near future. The right to speedy trial guaranteed by Article 21 of the Constitution cannot be subordinated to a mechanical application of Section 37 of the NDPS Act. It was further submitted that the mandatory provisions of Sections 42, 50 and 52 of the NDPS Act have been breached; that no independent witness was associated despite the opportunity to do so; that all witnesses cited are police personnel and that the respondent has no

⁴ Criminal Appeal No.3931 of 2023 @ SLP (Crl.) No. 12601 of 2023

antecedent under the NDPS Act, the sole antecedent being one under the Arms Act of the year 2020. The grounds of arrest in writing were also not furnished to the respondent, contrary to the mandate of *Mihir Rajesh Shah v. State of Maharashtra and Another*⁵, as followed in *Dr. Rajinder Rajan v. Union of India*⁶, and that the State has not placed anything on record to show that the respondent has misused the liberty granted to him or has violated any condition of bail. Parity with the co-accused, already on bail, was also relied upon.

8. We have heard the learned Senior Counsel for the parties at length and perused the record.
9. The position of law on the grant of bail in matters involving recovery of commercial quantity of contraband under the NDPS Act is well settled. Section 37(1)(b)(ii) of the NDPS Act is cast in mandatory terms. Where the Public Prosecutor opposes the application for bail, the Court can enlarge an accused on bail only upon

⁵ (2026) 1 SCC 500

⁶ Criminal Appeal No.1700 of 2026 @ SLP (Cri.) No.3326 of 2026 dated 01.04.2026

recording its satisfaction on two cumulative conditions: first, that there are reasonable grounds for believing that the accused is not guilty of the offence; and second, that the accused is not likely to commit any offence while on bail. The recording of such satisfaction is not a mere formality but a jurisdictional requirement. This Court in *Kashif (supra)* has held, in plain terms, that the non-recording of the twin satisfaction, being mandatory in nature, renders an order granting bail unsustainable. A similar view has been expressed in *Lalrintluanga Sailo (supra)* and *Ajay Kumar Singh (supra)*.

10. When the impugned order is tested against that settled position, it becomes apparent that paragraph 8 of the impugned order, which carries the weight of the reasoning, does not contain a finding on either of the twin conditions prescribed by Section 37(1)(b)(ii) of the NDPS Act. What the High Court has, instead, proceeded on is the proposition that “the rigors of Section 37 of the NDPS Act can be diluted

bearing in mind the right to a speedy trial”. The right to speedy trial under Article 21 of the Constitution is undoubtedly a valuable constitutional guarantee; but in the context of a special statute such as the NDPS Act dealing with commercial quantity, that right has to be read alongside, and not in displacement of, the mandate of Section 37. The omission to record the twin satisfaction prescribed by the statute, it appears, may have escaped the attention of the High Court.

11. Upon a perusal of the record, another fact appears to have gone unnoticed before the High Court. In paragraph 14 of the bail petition, the respondent represented that no similar petition for the grant of regular bail had been filed by him, and that no bail application was pending before the learned Trial Court, “except CRM-M 5003 of 2025 and CRM-M 30865 of 2025”. The disclosure so made rests at the case numbers alone; it does not indicate the nature of either the matter, nor the outcome thereof. Had the particulars been placed before the High Court,

it would have emerged that the respondent's own earlier petition for regular bail had been dismissed by a coordinate Bench of the High Court on 27.08.2025. The disclosure in paragraph 14 of the bail application, as made, does not reveal this. In a matter where Section 37 of the NDPS Act is attracted and the Court's discretion is sought to be exercised, nothing short of complete candour is expected, and the bare reference to case numbers does not discharge that obligation.

12. This Court would add one further observation. In *Parwinder Singh* (supra), this Court sounded a note of caution that, having regard to the drug menace that grips the State of Punjab, Courts ought to be highly circumspect while granting bail, more so to a repeat offender. The caution so sounded, does not appear to have been adverted to in the impugned order, even though the respondent, charged with the recovery of a commercial quantity of heroin, himself stood enlarged on bail in another case.

13. For the reasons set out above, this Court is of the considered view that the impugned order cannot be allowed to sustain. The mandatory requirement of Section 37(1)(b)(ii) of the NDPS Act having not been met, the antecedent of the respondent, though noticed, not having been tested against that requirement, and the disclosure made in the bail petition having left material particulars out of view, the grant of regular bail, warrants interference. The other contentions advanced on behalf of the respondent touching upon the merits of the prosecution case would appropriately fall for consideration before the competent Court when the question of bail is taken up afresh. This Court, accordingly, refrains from expressing any opinion thereon.
14. In the light of the foregoing, the appeal is allowed. The impugned judgment and order dated 18.02.2026 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 72303 of 2025 is set aside.

15. The respondent shall surrender before the competent Trial Court within one week from the date of this order. Liberty is reserved to the respondent to apply afresh for regular bail before the competent Court on surrender.
16. Pending application(s), if any, shall stand disposed of.

.....**J.**
[**SANJAY KAROL**]

.....**J.**
[**AUGUSTINE GEORGE MASIH**]

NEW DELHI;
APRIL 24, 2026.