

PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : Sumeet Goel, J.)

ARJAN SINGH @ ARJAN

Vs.

STATE OF PUNJAB

Criminal Miscellaneous (M) No 41482 of 2026

Decided on : 03-08-2026

A. Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 483 — Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 21-C, 25, 29, 61, 85 — Article 21 of the Constitution of India — Grant of Regular Bail for Commercial Quantity — Where the petitioner was arrested for alleged recovery of a commercial quantity of contraband (502 grams of heroin) and had suffered incarceration for over one year (1 year and 23 days), while the trial was procrastinating with none of the 11 cited prosecution witnesses examined till date, the rigors imposed under Section 37 of the NDPS Act stand diluted by the overarching fundamental right to a speedy trial under Article 21 of the Constitution — Prolonged pre-trial detention without justifiable cause risks transforming custody into punitive imprisonment — Consequently, where there is no evidence suggesting the petitioner is a flight risk or likely to tamper with evidence, regular bail is granted subject to strict safeguards. (Paras 1, 2, 6, 6.1, 6.2, 7)

B. Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 37 vs. Article 21 of the Constitution — Pre-trial Incarceration — The statutory embargo under Section 37 of the NDPS Act cannot override the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution — Undue and impermissible delay in trial, when not attributable to the accused, entitles the accused to conditional liberty overriding statutory bail restrictions. (Para 6.2)

JUDGMENT

Sumeet Goel, J. - 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.183 dated 5.7.2025 under Sections 21-C/25/29-61-85 of

Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station ANTF, SAS Nagar.

2. The gravamen of the FIR in question pertains to recovery of 502 grams of heroin.

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 5.7.2025. Learned counsel has further argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further urged that mandatory provisions of NDPS Act have not scrupulously been complied with, and therefore, the prosecution case suffers from inherent defects. Learned counsel has further submitted that the sample in question was produced before the concerned Magistrate on 6.7.2025 whereas the same was sent to FSL on 11.7.2025, which creates material dent in the prosecution version. Learned counsel has further urged that the petitioner has already suffered incarceration for more than 1 year and is not required in any other case. Hence, 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 regular bail. Learned State counsel has further submitted that the instant bail plea is restricted 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 01.08.2026 in Court, which is taken on record.

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

6. The petitioner was arrested on 5.7.2025 wherein after investigation was carried out; challan was prepared on 30.12.2025 and subsequently filed. Total 11 prosecution witnesses have been cited but none have been examined till date. It is thus indubitable that culmination of trial will take its own time. The rival contentions raised by learned counsel 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 The trial is indeed procrastinating and folly thereof cannot be saddled upon the petitioner. As per custody certificate dated 01.08.2026 filed by the learned State counsel, the petitioner has already suffered incarceration for a period of 1 year and 23 days & is not shown to be involved in any other case. In this view of the matter, the rigors 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 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/Illaqa 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.

8. 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 for 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.