



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

211

**CRM-M No.64679 of 2023 (O & M)
Date of decision : 17.7.2025**

Joshil Kumar**Petitioner**

Versus

State of Punjab**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. R.S. Malik, Advocate, for the petitioner

Mr. Jaypreet Singh, DAG, Punjab

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.114 dated 12.6.2021, under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of NDPS Act added later on), registered at Police Station Hariana, District Hoshiarpur.

2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

'Statement of ASI Rajwinder Singh 249/HPR Incharge Chowki Bhunga, Police Station Hariana, District Hoshiarpur M:9501500249, stated that today I alongwith ASI Harjinder Singh 1021, PHG Varinder Kumar 25801 by boarding in official vehicle No. PB-07-AS-7640, whose driver HC Davinder Singh 312 were present Chaurasi Road, in connection to Near DAV School Ground, patrolling and checking of suspicious elements. Then a clean shaven youth was seen coming from the side of Dosarka Road on a black Splendor motorcycle, upon seeing the police party, he immediately reversed his motorcycle and started to run the motorcycle towards



Dosarka Road, but his motorbike slipped on the left side of the paved road and the youngman fell down on the paved side of the road, I apprehended the youngman with the help of colleagues. Before apprehending the youngman, he took out a plastic polythene from his jean pent and threw it near his fallen motorcycle. Upon questioning the apprehended youngman, he disclosed his name as Harwinder Singh alias Mani son of Sarabjit Singh, resident of Dhoot Kalan, Police Station Haryana, District Hoshiarpur, he was questioned that what is in the plastic polythene, which he threw near the motorcycle, then he told that I was going to give heroin to my client but I was shocked to see the police party, so I threw the plastic polythene containing the heroin near my motorcycle, upon which, I informed the Head Munshi of the Police Station Haryana to send to the competent Investigating Officer on the spot, have come. By handing over now you the of apprehended Harwinder Singh @ Mani son Sarabjit Singh, resident of Dhoot Kala Police Station Haryana, District Hoshiarpur, I am leaving with my police party. Sd/- Rajwinder Singh ASI, verified by Maninder Singh SI Police Station Haryana, dated 12-6-2021.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 13.6.2021. Learned counsel has further submitted that the petitioner has been falsely implicated into the FIR in question. It has been further urged that the mandatory provision of NDPS Act has not been complied with. Learned counsel has further urged that total 13 prosecution witnesses have been cited but the trial still has not culminated. Learned counsel for the petitioner has further submitted that the trial Court has repeatedly issuedailable warrants against the officials/ police witnesses but they have not come forward to have their testimonies recorded. 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 16.7.2025 in Court, which is taken on record.

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

6. The petitioner was arrested on 13.6.2021 whereinafter investigation was carried out and challan stands presented on 9.10.2021. Total 13 prosecution witnesses have been cited out of which 4 have been examined and 2 have been given up. A perusal of the *zimni* orders, brought forth by the petitioner, indicates that the trial is procrastinating and folly thereof cannot be fastened upon the petitioner. It is the duty of the prosecution to have the testimonies of its witnesses recorded expeditiously, especially when such witnesses are police/official witnesses.

6.1 As per custody certificate dated 16.7.2025 filed by learned State counsel, the petitioner has already suffered incarceration for a period for more than 4 years. Though multiple other FIRs have been registered against the petitioner, including FIR(s) under the NDPS Act, but such condition envisaged under Section 37 of the NDPS Act ought to be relaxed in the present case in view of his undue long incarceration keeping in view the mandate of Article 21 of the Constitution of India. A profitable reference in this regard is being made to a judgment passed by the Hon'ble Supreme Court in *Criminal Appeal No.2787 of 2024* titled as *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another*, as well as the dicta passed by this Court in **CRM-M No.64074 of 2024** titled



Kulwinder v. State of Punjab, decided on 10.1.2025 (neutral citation no.2025:PHHC:002695).

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.

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.

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 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. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

17.7.2025

Ashwani

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No