

2025:PHHC:083725



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

216

Date of decision: 11.07.2025

1. CRM-M-19261-2025

Prem Singh @ Kala

....Petitioner

Versus

State of Punjab

....Respondent

2. CRM-M-26376-2025

Balwinder Singh @ Babba

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Navjot Kaur, Advocate
for Mr. B.S. Bhalla, Advocate
for the petitioner in CRM-M-19261-2025.

Mr. Raja Paramdeep Saini, Advocate (through V.C.)
for the petitioner in CRM-M-26376-2025.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Vide this common order, I intend to dispose of CRM-M Nos.19261 and 26376 of 2025, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CRM-M-26376-2025.

1.1. Prayer in both these petitions filed under Section 483 of BNSS, 2023 is for grant of regular bail to the petitioner(s) namely Prem Singh @ Kala and Balwinder Singh @ Babba in FIR No.05 dated

2025:PHHC:083725



12.01.2025 registered under Sections 21, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (Section 21-C of NDPS Act and Section 25(8) of Arms Act, added later on) at Police Station Cantonment, Police Commissionerate, District Amritsar.

2. As per the prosecution case, on 12.01.2025, a secret informer has informed the police that Gurpreet Singh @ Gopi and Kunan Singh in connivance with their companions are indulged in the business of selling heroin and they used to receive the contraband by different ways/methods from Pakistan and used to supply the same in Amritsar and other areas and today Gurpreet Singh @ Gopi and Kunan Singh are going on a motorcycle make Hero Honda, without number plate, in order to struck a deal of supply of heroin and if they could be apprehended then heavy recovery of contraband would be effected from them. Being the information credible and reliable, the FIR (supra) was registered. Action was taken and thereafter, accused Gurpreet Singh @ Gopi and Kunan Singh were arrested and recovery of 01 kilogram heroin was effected from them.

3. Learned counsel for the petitioner(s) *inter alia* contends that both the petitioner(s) have been falsely implicated in the FIR (supra). Admittedly, the recovery of 01 Kg heroin was effected from the conscious possession of Gurpreet Singh @ Gopi and Kunan Singh and thereafter, they suffered their respective disclosure statement(s), during their custodial interrogation and nominated one Nishan Singh @ Sona and Balwinder Singh @ Babba. Thereafter, another person namely

2025:PHHC:083725



Balwinder Singh @ Gopi son of Dalbir Singh of the same name was nominated as accused, from whose possession, recovery of 01 Kg heroin was effected. The petitioner – Prem Singh @ Kala has been nominated as accused in the FIR (supra) on the basis of disclosure statement made by accused – Balwinder Singh @ Babba. Admittedly, nothing has been recovered from the petitioner(s) in contravention of the provisions contained under the NDPS Act and in the absence of any contraband from the conscious possession of the petitioner(s), the complicity of both the petitioner(s) is not proved at all. Further both the petitioner(s) have been nominated as an accused in the FIR (supra) on the basis of the disclosure statement made by co-accused, during the custodial interrogation, however, such statement recorded by a police officer under Section 67 of the NDPS Act, has no evidentiary value in the eyes of law as the same is hit by Sections 25 and 26 of the Evidence Act. Apart from the disclosure statement, there is no other corroborative evidence either forensic or otherwise to connect the petitioners with the other co-accused. Further the recovery of one pistol and live cartridges has been shown to be effected from the petitioner – Balwinder Singh @ Babba.

4. Learned counsel representing the petitioner – Balwinder Singh @ Babba disputes the recovery of weapons from him and refers to the order passed by learned Judge, Special Court, Amritsar on 01.04.2025 and submits that 04 live cartridges and country-made pistol have not been recovered from the petitioner – Balwinder Singh @

2025:PHHC:083725



Babba rather it was recovered from co-accused Sabar Singh @ Tarlok Bala. Further the recovery of 04 live cartridges have been planted upon the petitioner – Prem Singh @ Bala to show interception of anti-social element in the statewide campaign carried out by Punjab Police. Further both the petitioner(s) are not involved in any other case of the NDPS Act prior to registration of the FIR (supra).

5. Learned counsel for the petitioner(s) further submits that there are total 24 prosecution witnesses cited in the list of witnesses, out of which, no PW has been examined till date and the trial is likely to take long time in conclusion.

6. *Per contra*, learned State counsel has filed custody certificates today in the Court which are taken on record and he refers to the status report and submits that one pistol .30 bore Pietro Beretta 2 Made in Italy was recovered from the petitioner – Balwinder Singh @ Babba on 10.02.2025 and as such, his complicity is duly proved, however, he could not controvert the fact that no contraband has been recovered from the petitioner(s).

7. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner(s) are behind the bars from the last 04 months and 27 days. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 24 prosecution witnesses, no PW has been examined so far.

2025:PHHC:083725



8. A two Judge Bench of Hon'ble Supreme Court in **“Satender Kumar Antil vs. CBI”, (2022) 10 SCC 51**, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

9. Further the culpability, if any, would be determined at the time of trial and as such, no useful purpose will be served by further detention of the petitioner(s)-accused. Keeping the petitioner(s) in further detention without the prospect of the trial being concluded in the near future, would be violative of their rights under Article 21 of the Constitution of India.

10. Further keeping in view the law laid down by the Hon'ble Supreme Court of India in **“Prabhakar Tewari vs. State of U.P. and another” 2020 (1) R.C.R. (Criminal 831)** and **“Maulana Mohd. Amir**

2025:PHHC:083725



Rashadi vs. State of U.P. and another”, 2012 (2) SCC 382, the involvement of the petitioner(s) in other cases would not be a ground to refuse grant of concession of regular bail.

11. In view the discussion above, the present petitions are allowed. Accordingly, without commenting upon the merits of the case, the petitioner(s) namely Prem Singh @ Kala and Balwinder Singh @ Babba are ordered to be released on regular bail during pendency of the trial, on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/trial Court/Duty Magistrate.

12. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

13. A photocopy of this order be placed on the file of other connected case.

(HARPREET SINGH BRAR)
JUDGE

11.07.2025
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No