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2025.PHHC.017128



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

CRM-M-5670-2025

Date of Decision: **05.02.2025**

DEEPAK THAPA

.....Petitioner

VERSUS

UNION TERRITORY CHANDIGARH

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Vivek Kathuria, Advocate,
for the petitioner

Mr. Manish Bansal, APP, UT, Chandigarh.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition cast under Section 483 of the B.N.S.S., the petitioner prays for him being granted the concession of regular bail, in case FIR No.0001, dated 16.02.2024, under Sections 21 of the N.D.P.S. Act, (Sections 22/29 of the NDPS Act, and Sections 419, 467, 468 and 471 of the IPC, and Section 14 of the Foreigners Act, added later on), registered at Police Station Anti-Narcotics Task Force, Chandigarh.

2. This is a third petition, filed by the present petitioner, for grant of regular bail, the last one having been dismissed as withdrawn on 17.09.2024 (Annexure P-5).

3. The instant case has been registered on a complaint of SI Suresh Kumar. The relevant extract of the FIR reads as under:-

“...today 1, SI alongwith HC Anil 1649/CP, Sr. C. Jasbir Singh 508/CP, Sr. C. Sandeep 2137/CP, Sr. C. Narinder 1889/CP, C. Sumit 3746/CP, C. Ravinder 4599/CP were patrolling in the area of U.T., Chandigarh prevention of crime in two private vehicles. After parking our private vehicles in the parking in front of Sector 40 Market, when I alongwith accompanying officials was patrolling on foot along the wall of Govt.

Model Senior Secondary School Sector 40-B, Chandigarh towards Sector 40 A/B turn, then at about 07.50 PM, a motorcycle rider, without any number plate on motorcycle, was seen standing near Crèche Sector 40-B road. On seeing the police party coming towards him, the said person immediately after starting his motorcycle tried to flee away but since a Car was going besides his motorcycle, he got imbalanced and after hitting on the footpath near corner of Creche, fell down and when I alongwith accompanying officials reached near the motorcycle while running, he on seeing the police party coming towards him, after taking out a polythene envelope from his blue white jacket from right side and after throwing the same on the road, tried to crush it with his foot. I alongwith accompanying officials apprehended him and lifted the polythene bag thrown on the ground (road) and after opening the said polythene bag, it, was found containing two polythene pouch, one of which was found containing dali-like and powder-like intoxicant substance whereas the other polythene pouch was found containing small balls type intoxicant tablets of cream colour and on asking, the motorcyclist disclosed his name and address as Deepak Thapa son of Bheem Bahadur, Resident of # 4860. Ground Floor Sector 38-West, Chandigarh, age 26 Years. On asking about the recovered substance and tablets, he disclosed that powder like substance is heroin and the tablets are crack/coca Balls, which are sold by me to the drug addicts. Deepak Thapa could not produce any license/permit. I tried to join passersby after disclosing the them the factum of recovery but all of them left showing their genuine excuses and without disclosing their names and addresses. On checking the recovered dali-like substance and powder-like substance on Drug Detection Kit, it tested positive for Heroin whereas the recovered intoxicant balls tested positive for cocaine. On weighing the recovered Heroin alongwith recovered polythene envelope on the electronic scale, it weighed 21 grams. I took a new polythene envelope which weighed 0.86 grams. After putting the recovered Heroin in said new polythene envelope and on weighing it, it weighed 20.63 grams. Thus the heroin alone weighed 19.77 grams. On weighing the recovered intoxicant Cocaine tablets without polythene envelope on electronic scale, it weighed 20.20 grams. After putting the Cocaine in same recovered polythene envelope and after putting the same in a plastic jar, its parcel was prepared by putting the same in white cloth. After putting the Heroin and the recovered polythene envelope in a plastic jar, its parcel was prepared by putting the same in white cloth. Both the aforesaid parcels were sealed by putting two-two seals of SK and sample seal was prepared separately on a white cloth and the prescribed forms were completed and seal after use was handed over to witness Constable Sumit 3746/CP. Both the aforesaid parcels of Cocaine and Heroin with sample seal were taken into police possession vide separate seizure memo. On checking the recovered motorcycle, the motorcycle without number plate Colour Black Splendor Plus was found, which was taken into police possession vide separate seizure memo. The aforesaid accused by keeping the recovered 19.77 grams Heroin and Cocaine 20.20 grams. has committed offence under Section 21 of the NDPS Act, therefore, after tehrir is being sent to the police station through Senior Constable Jasvir 508/CP for getting a case registered against Deepak Thapa son of Bheem Bahadur, resident of House No.4860, Ground Floor, Sector 38-West, Chandigarh under Section 21 of the NDPS Act. After registering the case, its number be intimated. I alongwith accompanying officials, am busy with the investigation at the spot. For calling 2nd I/O at the spot, MHC ANTF is being intimated telephonically.....”

4. The learned counsel for the petitioner submits that the reason for filing the instant third petition is that there is no progress in the trial, since the dismissal of last bail application on 17.09.2024, till date as out of the total 27 prosecution witnesses, examination-in-chief of only two witnesses has completed, therefore, the trial is progressing at a snails pace, therefore, no fruitful purpose would be served by keeping the petitioner behind the bars, who has already suffered incarceration of more than 11 months, as on today.

5. He next submits that, the petitioner was apprehended while carrying 19.77 grams of heroin (minus the weight of polythene bag) and 22.20 grams of cocaine. Both the contrabands fall within the ambit of non-commercial quantity as per the Schedule attached to the NDPS Act, therefore, the rigor of Section 37 of the NDPS Act is not applicable.

6. He finally submits that the co-accused-Daniel, has been extended the relief of regular bail by a co-ordinate bench, vide order dated 27.01.2025 (Annexure P-10) and the present petitioner is on co-equal pedestal.

7. On the other hand, learned APP, UT, Chandigarh, although vociferously opposes the grant of regular bail to the petitioner, however, on instructions imparted to him by the official concerned, he verifies that out of the total 27 prosecution witnesses cited by the prosecution in the final report, only the examination-in-chief of two witnesses has completed till date.

8. He has also filed a custody certificate *qua* the present petitioner in the court today, which is ordered to be taken on record. The custody certificate reflects that the petitioner has suffered incarceration of 11 months

and 16 days, as on today, and he is stated to be involved in two other criminal cases, but not of a similar nature, however, he is on bail in those cases.

9. This Court has heard the submissions made by the learned counsels for the parties and perused the record.

10. Be that as it may, considering the fact that: **(i) the recovered contraband falls within the ambit of “non commercial quantity”;** **(ii) as per the custody certificate (*supra*), the petitioner has suffered incarceration of 11 months and 16 days till date;** **(iii) there is no likelihood of the trial concluding anytime soon inasmuch as out of the total 27 prosecution witnesses only examination-in-chief of only two witnesses has conducted;** **(iv) co-accused-Daniel, has already been extended the relief of regular bail by a co-ordinate bench;** this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

11. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

12. All pending application(s), if any, also stand **disposed** of accordingly.

February 05, 2025

dharamvir

(KULDEEP TIWARI)
JUDGE

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