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

CRM-M-29363-2025

Date of decision: 01.07.2025

Rohit Gilhotra alias Rohit Kumar alias Ricky

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Karandeep Singh, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.30 dated 09.03.2025 under Sections 21/29 of the NDPS Act registered at Police Station City-2 Abohar, District Fazilka.

Brief facts of the case are that when the police officials were patrolling for suspicious activity or person from Alamgarh bypass chowk Abohar through Ganganagar Road, and were going to the city, they found that some persons were sitting on a sewerage chamber and were fiddling with something in their hands. Upon seeing the police party, the persons got panic and throw the plastic bag and tried to run but were captured by the police and they were apprehended with 40 grams of *heroin* and on the basis of the alleged recovery, the FIR (*supra*) was registered.

Learned counsel for the petitioner *inter alia* contends that perusal of the FIR (*supra*) clearly indicates that the case set up by the prosecution is highly improbable and the entire case of the prosecution hinges upon the



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testimony of the official witnesses as no independent witness was joined during the course of investigation or at the time of the alleged recovery. Further, the conscious possession from the petitioner of the alleged contraband has not been duly proved. It is further submitted that 40 grams of *heroin* does not fall under the ambit of commercial quantity as defined under the NDPS Act. Therefore, the embargo under Section 37 of the NDPS Act is not attracted in the present case. The petitioner is not involved in any other case under the NDPS Act and he is behind the bars since 09.03.2025. Challan has been presented and the investigation is complete.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that 40 grams of *heroin* has been recovered from the petitioner and his complicity is duly proved as he was apprehended at the spot. Further, he could not controvert the fact that the alleged contraband does not fall under the ambit of commercial quantity and the petitioner is not involved in any other case under the NDPS Act.

A two Judge Bench of Hon'ble Supreme Court in '***Satender Kumar Antil v. 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."

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Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 09.03.2025. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 09 prosecution witnesses, none has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Rohit Gilhotra @ Rohit Kumar @ Ricky, is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

01.07.2025*Neha*

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No