



CRM-M-49297-2025 (O&amp;M)

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

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Reserved on : 09.09.2025

Pronounced on : 10.09.2025

Jiwan Kumar @Tidhi @Jeewan Kumar @Tiddi

..... Petitioner

VERSUS

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH**

Present: Mr. Abhishek Sharma, Legal Aid Counsel for the petitioner.

Mr. K.D. Sachdeva, DAG Punjab.

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**SURYA PARTAP SINGH, J.**

1. This is the first petition filed by the petitioner, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, for regular bail in a case arising out of FIR No.339 dated 23.11.2024, Police Station City Hoshiarpur, District Hoshiarpur, under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter being referred to 'NDPS Act'. The application for bail filed by the petitioner before the Court of learned Additional Sessions Judge, Hoshiarpur has been dismissed vide order dated 14.01.2025. The petitioner is in custody, and therefore, craving for bail.

2. The allegations as contained in the FIR are that on 23.11.2024, when a police party headed by ASI Satnam Singh was on patrolling duty, they spotted a person coming from opposite direction, who when noticed a

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police party on his way ahead, hastily tried to flee. On the basis of suspicion, he was intercepted and on enquiry, he disclosed his name as Jiwan Kumar @Tiddi, petitioner herein. On search, one polythene envelope containing 50 loose intoxicating tablets was recovered from his possession. During interrogation, the petitioner suffered a disclosure statement, wherein he nominated the name of Rajeev Kumar @Ghoki.

3. Heard.

4. It has been contended by learned counsel for the petitioner that the petitioner has been framed in a false case and that by cooking-up a false story, the petitioner is being prosecuted for being in possession of commercial quantity of psychotropic substance. According to learned counsel for the petitioner, the entire prosecution case is resting upon a plea that the search of the person of the petitioner was carried out, but before conducting the search, the mandatory provisions, as contained under Section 50 of NDPS Act, were not complied with. As per learned counsel for the petitioner, the abovementioned lapse on the part of the Investigating Officer is fatal for the prosecution case.

5. In addition to above, it has also been argued by learned counsel for the petitioner that otherwise also, in the present case, the trial is not likely to be concluded in near future, and that without trial the petitioner is facing the agony of long incarceration. According to learned counsel for the petitioner, co-accused, namely Rajeev Kumar @Ghoki, has already been afforded the benefit of bail by this Court, vide order dated 19.08.2025, and therefore, on the ground of parity also, the petitioner is entitled for bail. As



per learned counsel for the petitioner, the Coordinate Bench of this Court, while entertaining similar petition having identical facts, has already afforded the benefit of bail to the accused. In this regard, learned counsel for the petitioner has referred to the observations made by the Coordinate Bench of this Court in CRM-M-14327-2025 titled as ‘Saimble Ram @Saimble Vs. State of Punjab’.

6. *Per contra*, learned State Counsel argues that the quantity of contraband recovered from the possession of petitioner was commercial quantity and therefore, without satisfying the twin conditions as enumerated under Section 37 of NDPS Act, the benefit of bail cannot be afforded to the petitioner. It has also been argued by learned State Counsel that the plea of the petitioner with regard to non-compliance or improper compliance of Section 50 of NDPS Act cannot be looked into at this stage, when the prosecution is yet to lead evidence before the learned trial Court and thus, this argument of learned counsel for the petitioner cannot be taken into consideration that for want of proper compliance of Section 50 of NDPS Act, the petitioner is entitled to bail.

7. The record has been perused carefully.

8. A perusal of record shows that in the present case, the allegations against the petitioner are for being in possession of contraband and if the prosecution’s allegations are taken to be true at their face value, it transpires that against the prescribed quantity of 2.5 gms (for commercial quantity), the quantity of psychotropic substance found in possession of petitioner was little above 5.7 gms.



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9. While dealing with similar situation, the Hon'ble Supreme Court of India accorded bail to the accused by observing that fundamental right to liberty guaranteed to the accused, being citizen of India, is of utmost importance. The Hon'ble Supreme Court of India in *Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260* held that a plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. As per Hon'ble the Supreme Court of India, the only manner in which such special conditions as enacted under Section-37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

10. Otherwise also, there are certain relevant aspects which needs to be taken into consideration, before arriving at any decision with regard to present bail application. Those factors are: -

- a) That the petitioner is already in custody for a period of 9 months and 14 days;
- b) that the petitioner has no criminal antecedents;
- c) that the quantity of contraband although a commercial quantity, is just above the lowest threshold prescribed for commercial quantity;



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- d) that since investigation is already complete, nothing is left to be recovered from the possession of petitioner;
- e) that trial is not likely to be concluded in near future; and
- f) that detention of the petitioner in judicial lockup is not likely to serve any purpose as the benefit of bail has already been afforded to co-accused.

11. If the cumulative effect of all the abovementioned factors, involved in the instant case, is taken into consideration, it leads to the conclusion that the petitioner is entitled for the benefit of bail.

12. Accordingly, without commenting anything on the merits of the case, the present petition is hereby allowed. The petitioner is hereby admitted to bail subject to his furnishing bail bonds to the satisfaction of learned trial Court. In case, the concerned Court is not available on the given date, the learned Sessions Judge would be at liberty to assign the abovesaid case, for the abovesaid purpose, to any other Court.

**(SURYA PARTAP SINGH)**  
**JUDGE**

**SEPTEMBER 10, 2025**

*Gaurav Thakur*

Whether speaking / reasoned  
Whether Reportable

Yes/No  
Yes/No