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

CRM-M-35039-2025 (O&M)
Date of decision: August 12, 2025

Mukhtar Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**Present:-** Mr. B.B.S. Randhawa, Advocate for the petitioner.

Mr. Baljinder Singh Sra, Additional AG Punjab.

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case bearing FIR No.22 dated 20.03.2024, registered for the offences punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of the NDPS Act added later on), at Police Station Fatehgarh Churian, Police District Batala, District Gurdaspur.

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 LR/ASI Mohan Singh No. 1855/Batala, Police Station Fatehgarh Churian, Police District Batala. Stated that today I alongwith LR/ASI Sukhraj Singh No. 2129/Batala, CT Parminder Singh No. 2178/Batala and PHG Jaswant Singh No. 1530, on private vehicles, were going from Police Station F.G. Churian to Village Veela Khurd, Teja, Teja Kalan, Kala Afgana etc. patrolling and in Teja for search of bad elements and during patrolling who on when police party on minor bridge on Teja Kalan, Road Kala Afgana then one hair cut

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youngster was seen coming from opposite side on foot, who was holding polythene bag in his right hand, seeing the police party suddenly perplexed and tried to return to village. To whom on suspicion, I, with the help employees apprehended him while he was to throw the polythene bag holding by him in his hand and asked his name and address, who told his name as Mukhtar Singh son ASI, name of fellow of Sawinder Singh resident of Teja Kalan. On which I, ASI, have suspicion that accused Mukhtar Singh above said is carrying some narcotic substance in polythene hand. I, a bag holding by him in his right hand ASI, being local ranked, in this regard I, ASI, House informed the Station Officer, through phone that investigating officer be sent the spot for which taking action. reached you the on on On spot employees. Statement is recorded to you. alongwith fellow Action should be taken. Sd/- Mohan Singh LR/ASI, Police Station Fatehgarh Churian, dated 20.03.2024. Attested by SD/- Balwinder Singh ASI, Police Station Fatehgarh Churian, dated 20.03.2024. Police Proceedings: Today I, ASI, Police Station was present that in INSP. Kirandeep Singh, Station House Officer, informed me that basis of Singh No. on the suspicion LR/ASI-Mohan 1855/Batala alongwith police party, has apprehended one hair cut person alongwith polythene bag carrying by him in his hand, at minor bridge Teja Kalan, Road Kala Afgana. Reached on the spot for taking action. On which alongwith I PHG Ajitpal Singh No. 1509, with my investigation kit, laptop, printer, private on vehicle, reached at the spot, where LR/ASI Mohan Singh No. 1855/Batala alongwith LR/ASI Sukhraj Singh No. 2129/Batala, CT Parminder Singh No. 2178/Batala and PHG Jaswant Singh No. 1530, met and presented one youngster who was carrying polythene bag in his right hand and LR/ASI Mohan Singh NO. 1855/Batala got recorded his said statement signatures to me and put his underneath his statement, which was attested by me. Then I, LR/ASI, Mohan Singh No. 1855/Batala, informed said youngster about my name, address and posting and asked his name, address, who told his name as Mukhtar Singh son Singh, resident Before of Sawinder of Teja Kalan. conducting search of the of polythene bag carrying in the right hand accused Mukhtar Singh above said, efforts were made to include witness from the public but every one showed their inability and refused to join the police party. Then I, ASI, in the presence of fellow employees asked to accused Mukhtar Singh that I have suspicion that you have narcotic substance in the polythene bag carrying by you in your hand, you have to be searched but you have legal right to get yourself gazette searched officer from or some some magistrate, who can be called by me on the spot. If you wish you can be brought before gazetted officer magistrate for conducting search, who told that you can conduct the search of mine and the polythene bag holding by me in my hand. On which consent memo under Section 50 NDPS Act was prepared. Consent memo was signed by the Mukhtar Singh and witnesses put their testimony. I, ASI, presence of in fellow employees checked the polythene bag holding by accused Mukhtar Singh in his hand then loose narcotic tablets colour white were recovered, which are total 920 narcotic tablets colour white, in counting, which were put into plastic box by me, ASI and parcel was prepared and I put my seal "BS" over it. Sample was prepared separately. Seal after use was handed over to S/CT Parminder Singh No. 2178/Batala. I, ASI, took the possession of said parcel as an evidence in police custody vide separate seizure memo and personal search of accused as conducted other Mukhtar Singh was rules then per no narcotic substance was of one recovered from accused said Mukhtar Singh and from the right pocket

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pant wore by him Indian Currency Note of Rs.100/- recovered, which police custody through search memo. Accused was into not was taken bill or personal could produce doctor prescription regarding any keeping recovered narcotic tablets recovered from him. Mukhtar Singh son of Accused Sawinder Singh resident of Teja Kalan, has committed an offence under Section 22-61-85 of NDPS Act by keeping 920 narcotic tablets colour white in his possession. Therefore, this ruqa is written and sent to police station through PHG Jaswant Singh registration 1530 for Number be of case. informed after registration of case. Special reports be issued to illaqa magistrate and senior officers. Control room be informed. I, ASI, alongwith fellow employees are busy in investigation on the spot. Sd/-Balwinder Singh, ASI, Police Station Fatehgarh Churian, dated 20.03.2024. With in area of minor bridge Teja Kalan, on Kala Afgana Road, at 09:00 PM.”

3. Learned counsel for the petitioner has iterated that the petitioner is in custody since 20.03.2024. Learned counsel for the petitioner has further submitted that the mandatory provisions of the NDPS Act have not been complied with, and thus, the prosecution case suffers from inherent defects. Learned counsel for the petitioner has iterated that the trial is delayed and the liability thereof cannot be fastened upon the petitioner. Learned counsel has further iterated that the petitioner has suffered incarceration for more than 10 months. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition by arguing that the allegations raised against the petitioner are serious in nature and, thus, he does not deserve the concession of the regular bail. Learned State counsel has further submitted that the instant bail plea is restricted by the rigors of Section 37 of the NDPS Act, and thus, the same ought to be dismissed. Learned State counsel seeks to place on record custody certificate dated 11.08.2025 in Court, which is taken on record.

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

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6. The petitioner was arrested on 20.03.2024 whereinafter investigation was carried out and challan was presented on 03.05.2024. Total 7 prosecution witnesses have been cited, but only 01 has been examined till date. The rival contentions raised at Bar give rise to debatable issues shall be ratiocinated upon during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. 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.

6.1. A perusal of the *zimni* orders passed by the trial Court, brought forth by the petitioner, indicates that the trial is indeed procrastinating and folly thereof cannot be saddled upon the petitioner. As per custody certificate dated 11.08.2025 filed by the learned State counsel, the petitioner has already suffered incarceration for a period of more than 10 months, & is not shown to be involved in any other case/FIR. In this view of the matter, the rigor imposed under Section 37 of the NDPS Act stands diluted in light of the Article 21 of the Constitution of India.

6.2. This Court in a judgment titled as *Kulwinder versus State of Punjab* passed in *CRM-M-64074-2024* (2025:PHHC:002695); after relying upon the *ratio decidendi* of the judgments of the Hon'ble Supreme Court in *Hussainara Khatoon vs. Home Secy., State of Bihar* (1980) 1 SCC 81; *Abdul Rehman Antulay vs R.S. Nayak* (1992) 1 SCC 225; *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another*, 2024(3) RCR (Criminal) 494;

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Mohd Muslim @ Hussain vs. State (NCT of Delhi) reported as 2023 INSC 311; Criminal Appeal No.245/2020 dated 07.02.2020 titled as “Chitta Biswas Alias Subhas vs. The State of West Bengal”; “Nitish Adhikary @ Bapan vs. The State of West Bengal”, Special Leave to Appeal (Crl.) No.5530-2022 dated 22.08.2022 titled as “Mohammad Salman Hanif Shaikh vs. The State of Gujarat”; Criminal Appeal No.1169 of 2022 dated 05.08.2022 titled as Gopal Krishna Patra @ Gopalrusma vs. Union of India, and Ankur Chaudhary vs. State of Madhya Pradesh, 2024(4) RCR (Criminal) 172; has held, thus:

“7.8. The right to a speedy and expeditious trial is not only a vital safeguard to prevent undue and oppressive incarceration; to mitigate anxiety and concern accompanying the accusation as well as to curtail any impairment in the ability of an accused to defend himself, but there is an overarching societal interest paving way for a speedy trial. This right has been repeatedly actuated in the recent past and the ratio decidendi of the above-referred to Supreme Court’s judgments have laid down a series of decisions opening up new vistas of fundamental rights. The concept of speedy trial is amalgamated into the Article 21 as an essential part of the fundamental right to life and liberty, guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed at the time of the arrest of the accused and consequent incarceration which continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result due to impermissible and avoidable delay since the time of the commission of the offence till the criminal proceedings consummate into a finality, could be averted. The speedy trial, early hearing and quick disposal are sine qua non of criminal jurisprudence. The overcrowded Court-dockets, the heavy volume of work and the resultant pressure on the prosecution and the Police, indubitably keeps the entire criminal jurisprudential mechanism under stress and strain. However, this cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. It does not serve any credit to the criminal justice system, rather it makes for a sad state of affairs. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the Court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend himself. It goes without saying that the consequences of pre-trial detention

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are grave. Accused, presumed innocent, till proven otherwise, are subjected to psychological and physical deprivations of jail-life, usually under onerous conditions. Equally important, the burden of detention of such an accused frequently falls heavily on the innocent members of his family.

There is yet another aspect of the matter which deserves consideration at this stage. The allegations in the present case relate to accused being involved in an FIR relating to commercial quantity of contraband under the NDPS Act, 1985. While considering a bail petition in a case involving commercial quantity, the Court has to keep in mind the rigours enumerated under Section 37 of NDPS Act, 1985 which mandates that Courts can grant bail to an accused only after hearing the public prosecutor and after having satisfied itself of twin conditions which are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not likely to commit any offence while on bail. The stringent rigours of Section 37 of the NDPS Act, 1985 must be meticulously scrutinized against the backdrop of accused's fundamental right to a speedy trial. The right to life and personal liberty cannot be rendered nugatory by unwarranted delays in the judicial process, particularly where such delay(s) is neither attributable to the accused nor justified at the end of the prosecution by cogent reasons. An individual cannot be kept behind bars for an inordinate period of time by taking refuge in rigours laid down in Section 37 of the NDPS Act, 1985. The legislature in its wisdom, in order to ensure speedy and timely disposal of the cases under the Act, has provided for the constitution of special Courts under Section 36-A of the Act. However, this Court cannot turn Nelson's eye to the protracted delays and systematic inefficiency that frustrate this legislative purpose. A Court of law is duty-bound to ensure that it does not become complicit in violation of an individual's fundamental rights, notwithstanding anything contained in a statute. While dealing with bail petition in a case governed by the rigours of Section 37 of the NDPS Act, 1985, the Court must strike a judicious balance between the legislative intent to curb the menace of drugs and the sacrosanct right of the accused to a fair and expeditious trial. Prolonged incarceration, without justifiable cause, risks transforming pre-trial detention into punitive imprisonment, an outcome antithetical to the principle of justice and equity.

Ergo, the unequivocal inference is that where the trial has failed to conclude within a reasonable time, resulting in prolonged incarceration, it militates against the precious fundamental rights of life and liberty granted under the law and, as such, conditional liberty overriding the statutory embargo created under Section 37 of the NDPS Act, 1985 ought to be considered as per facts of a given case. In other words, grant of bail in a case pertaining to commercial quantity, on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985."

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

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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 trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/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 cellphone 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.
- (viii) The petitioner shall submit, on the first working day of every month, an affidavit, before the concerned trial Court, to the effect that he has not been involved in commission of any offence after being released on bail. In case the petitioner is found to be involved in any offence after his being enlarged on bail in the present FIR, on the basis of his affidavit or otherwise, the State is mandated to move, forthwith, for cancellation of his bail which plea, but of course, shall be ratiocinated upon merits thereof.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the

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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. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

August 12, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No