



**CRM-M-40147-2024 and
CRM-M-46561-2024**

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

(202)

Date of Decision : 22.01.2025

1. CRM-M-40147-2024

Ajay @ Ajay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

2. CRM-M-46561-2024

Surender @ Monu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mrs. Gagandeep Kaur, Advocate
for the petitioner in CRM-M-40147-2024.

Mr. Manvinder Sidhu, Advocate
for the petitioner in CRM-M-46561-2024.

Mr. Pankaj Mulwani, DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. Both the instant petitions are amenable to be decided together, as the common relief of regular bail has been sought, in case FIR No.132, dated 11.06.2022, under Sections 20 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Bahadurgarh, District Jhajjar. Therefore, both the instant petitions are taken up together for adjudication.



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2. The earlier bail applications, preferred by the petitioner(s) were dismissed as withdrawn, by drawing an orders dated 05.09.2023 and 18.04.2024 (Annexures P-3), respectively.

3. On asking for the relief (supra), learned counsel for the petitioner(s) submits, that since the dismissal of the earlier bail applications of the petitioner(s), 15 prosecution witnesses have been examined, out of total 19 witnesses, as cited by the prosecution, as on date. Further, the petitioner-Ajay @ Ajay Kumar has undergone incarceration of more than 02 years and 06 months, and the petitioner-Surender @ Monu, has undergone incarceration of more than 02 years and 07 months, respectively, as on today, and the petitioner-Ajay @ Ajay Kumar clean antecedents, whereas, the petitioner-Surender @ Monu., is stated to be involved in one other case, under the NDPS Act.

4. In the instant case, the petitioners were caught carrying 72 kg Ganja, which is above the prescribed quantity i.e. 20 kg, under the schedule, and the same undisputedly falls under the ambit of commercial quantity, as per the schedule attached with the NDPS Act.

5. Though the learned counsel for the petitioner(s) has addressed the arguments on merits of the instant case, to the effect, that some of the mandatory provisions of the NDPS Act, has not been complied with. However, this Court, refrains itself from making any observation on such submissions. The entire thrust of the arguments revolves around the period of incarceration undergone by the petitioner(s).

6. Learned State counsel, on instructions imparted to him from the quarter concerned, has opposed the grant of concession of regular bail to the petitioner(s), on the ground, that the recovery effected in the instant case,



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falls under the ambit of commercial quantity, and therefore, the rigor of Section 37 of the NDPS Act, comes into operation, and both the requisite conditions, as envisaged under Section 37 of the NDPS Act, are not fulfilled by the petitioner(s), therefore, they do not deserve the relief of regular bail.

7. Further, learned State counsel submits that only four prosecution witnesses are left to be examined, and therefore, he has strongly opposed the asked for relief, to the petitioner(s). The submission made by the learned State counsel, is refuted by the learned counsel for the petitioner(s), and they have placed on record the photocopy of the zimini order dated 03.01.2025, passed by the learned trial Court concerned, wherein, the prosecution has sought time to produce on record the supplementary chargesheet, before the learned trial Court concerned. Learned counsel for the petitioner(s) further submits that in case, the supplementary chargesheet is filed, and thereafter, searching the source of the contraband, would add further delay in conclusion of the trial.

8. Learned State counsel has also placed on record the custody certificates dated 21.01.2025, qua the petitioner(s) in both the cases, today in the Court. The same are taken on record.

9. In deference to the directions passed by this Court in CRM-M-40147-2024, vide order dated 17.01.2025, short reply/status report dated 21.01.2025, by way of affidavit of Mr. Amit, Deputy Superintendent, District Jail, Jhajjar, on behalf of the respondent-State, along with medical report (Annexure R-1), has also been furnished by the learned State counsel today in the Court, which is taken on record.

10. The petitioner(s) were arrested on 11.06.2022, while carrying 72 kg. Ganja. The final report/challan in the instant FIR, was filed on dated



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02.12.2022, and charges were framed on 24.08.2023. It is not in dispute that 15 prosecution witnesses have been examined, out of total 19 witnesses, as cited by the prosecution, as on today, and only 04 prosecution witnesses are left to be examined. So far as, the rigor of Section 37 of the NDPS Act, is concerned, this Court, in a number of judgments has already observed that long incarceration would dilute the rigor of Section 37 of the NDPS Act.

11. This Court finds vigor from the judgment of the Hon'ble Supreme Court in ***“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023***, wherein, the Court has also discussed the effect of Section 37 of the NDPS Act, in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

12. This Court has heard the rival submission of the parties concerned, and is of the view that both the instant petitions are amenable to be allowed; (i) considering the period of incarceration undergone by the petitioner(s), (ii) specifically the fact that the prosecution is in process of



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filing supplementary chargesheet, which would add further delay in conclusion of the trial; (iii) and out of total 19 witnesses, as cited by the prosecution, 15 witnesses have already been examined, as on today, and only four witnesses are left for examination, therefore, this Court deems it appropriate to enlarge the present petitioner(s) on regular bail. Accordingly, both the instant petitions are **allowed**.

13. The petitioner(s) are ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

14. In case, in future, the petitioners are found to be involved, in such like similar offences, the respondent-State is at liberty, to file an appropriate application for cancellation of the bail granted to the petitioner(s).

15. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition(s) only.

16. Photocopy of this order be placed on the connected case file, as numbered above.

**(KULDEEP TIWARI)
JUDGE**

January 22, 2025
Manpreet

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