

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

2025:PHHC:096959



(225)

CRM-M-14122-2025

Date of decision: 31.07.2025

Tota Singh

...Petitioner

V/s

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

Mr.Karunesh Kaushal, AAG, Punjab.

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**SUMEET GOEL, J. (ORAL):**

1. Present petition has been filed under Section 439 of Cr.,P.C., for grant of regular bail to the petitioner in case bearing FIR No.165 dated 15.11.2022 registered for the offences punishable under Section 15(c) of NDPS Act, 1985 at Police Station Nahianwala, District Bathinda.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

*"12. FIRST INFORMATION CONTENTS:*

*Copy of statement "Statement of ASI Gurmail Singh 1074/Bathinda, Police Post Kili Nihal Singh Wala, Police Station Nahinawala, District Bathinda. Mobile No. 9915391435. Today I ASI alongwith Constable Ashpreet Singh No.182/Bathinda, PHG*

*Dilpreet Singh, while riding in a Government vehicle make Bolero bearing registration No.PB-03-AP-2320, being driven by PHG Dilpreet Singh were on patrolling and were going from village Jizida to Khemukna and when the police party reached near Poultry farm then time at about 08:00 A.M., out of one Innova vehicle, four persons were unloading white colour bags and were loading the same in one Alto car and on seeing the police vehicle they got perplexed and after leaving the bag they ran away and it is doubted that in the white colours bags there is poppy husk and along with Innova bearing registration No.PB-03AP- 5143, one Sikh man was apprehended and the persons who ran away were followed by Sepoy Arshpreet Singh and PHG Dilpreet Singh and three persons ran away in an Alto car. The name and address of the apprehended Sikh boy was asked, who disclosed his name as Gurjeet Singh son of Jagraj Singh, son of Chand Singh, resident of village Jeeda, District Bathinda and the persons who ran away in the Alto car alongwith the bags of poppy husk were disclosed as Tota Singh son of Harbans Singh, Gori Singh son of Kakka Singh, Gurcharan Singh @ Lacka son of Mithu Singh, all residents of village Jeeda and I being of the local ASI cannot investigate under the NDPS Act, upon which I informed ASI Gora Singh on mobile that I with the help of other officials have stopped one Innova vehicle bearing registration No. PB03-AP-5143 and Gurjit Singh son of Jagraj Singh, resident of Jeeda, on the basis of doubt of possessing poppy husk and to reach on the spot for action, upon which you along with Sepoy Jaskaran Singh 1504, PHG Jasmeet Singh 33205, while riding in a private car have reached on the spot alongwith laptop and printer and you have being made aware of circumstances. I have not car having tamper with the Innova registration No. PB03AP-5143 in the possession of Gurjeet Singh son of Jagraj Singh son of Chand Singh, resident of Jeeda, District Bathinda and with the white bags containing poppy husk nor I allowed anybody else to do so. I have got my statement recorded, which is heard and admitted to be correct, action may be taken. Sd/-Gurmail Singh ASI, verified by Sd/- Gora Singh, ASI, Incharge, Police Post, Kili Nihal Singh Wala, Bathinda, Police Station*

*Nahianwala, dated 15.11.2022. Police Action: Today I along with Sepoy Jaskaran Singh 1504, PHG Jasmeet Singh 33205 were on patrolling and in search of bad elements and were present at village Jeeda, where ASI Gurmail Singh informed me on telephone that he has stopped one Innova car bearing registration No.PB03AP-5143 alongwith Gurjeet Singh son of Jagraj Singh resident of Jeeda, District Bathinda on the basis of doubt having bags containing poppy husk and Tota Singh son of Harbans Singh, Gori Singh son of Kaka Singh, Gurcharan Singh @ Lack son of Mithu Singh, resident of Jeeda, who ran away in the Alto car alongwith bags containing poppy husk and asked me to reach at the spot at Khemuana road, Jeeda, upon which I ASI alongwith Sepoy Jaskaran Singh 1504, PHG Jasmeet Singh 33205, while riding in a private vehicle reached on the spot alongwith laptop and printer investigation kit, where, Gurmail Singh made me aware of circumstances and got his aforesaid and statement recorded with me. Private witness was tried to be associated but could associated because of not be less traffic and thereafter, I ASI asked the name and address of the person apprehended by ASI, Gurmail Singh, who disclosed his name as Gurjeet Singh son of Jagraj Singh son of Chand Singh, resident of village Jeeda, District Bathinda and the person, who ran away, their names were disclosed as Tota Singh son of Harbans Singh, Gori Singh son of Kaka Singh, Gurcharan Singh @ Lacka son Mithu, all residents of village Jeeda, District Bathinda. Thereafter, I ASI issued notice under Section 50 NDPS Act to Gurjeet Singh son of Jagraj Singh son of Chand Singh, resident of village Jeeda, District Bathinda and informed him regarding my name, rank and posting and told him that "I ASI Gora Singh 642/BTI I am in charge Police Post Kili Nihal Singh Wala, Police Station Nahinawala and I am posted there. I am in the uniform of ASI, which bears my name plate. The car Innova bearing registration No.PB-03AP-5143 in your possession is doubted to have poppy husk in plastic bag and therefore, you and Innova vehicle No. PB-03-AP-5143 in your possession and the plastic bags colour white are to be searched under NDPS Act but you have a legal right available that you can*

*get the plastic bags in your possession, be Innova vehicle bearing No. PB-03-AP-5143 searched by a Magistrate or a Gazetted officer and they can be called on the spot or you can be taken to them alongwith the plastic bags colour white in your possession and the vehicle Innova bearing registration No.PB-03-AP-5143. Upon which Gurjeet Singh aforesaid was read over the notice, in the presence of the witnesses, upon which he after admitting the contents of the notice as correct, put his signatures upon the same and I ASI Gurmail Singh and Constable Arshpreet Singh No.182/Bathinda signed as witnesses and thereafter, Gurjeet Singh aforesaid gave his consent and said that "I want to get searched in my possession the bag and Innova car PB-03-AP-5143 by a gazetted officer" Upon this, a non-consent memo was prepared, which was signed by said Gurjeet Singh and ASI Gurmail Singh and Sepoy Arshpreet Singh No.182/Bathinda put their signatures as witnesses and thereafter, I ASI called Sh. Rachpal Singh, PPS, DSP, SD, Bhucho on telephone and made him aware that I have apprehended one Innova bearing registration No.PB-03-AP-5143 alongwith Gurjeet Singh son of Jagraj Singh resident of Jeeda, District Bathinda on the basis of the doubt of having poppy husk and Tota Singh son of Harbans Singh, Gori Singh son of Kaka Singh, Gurcharan Singh @ Lacka son of Mithu Singh, all residents of Jeeda have ran away with Alto car, please reached at the spot at Khemuana road, Jeeda for action, upon which, Sh. Rachpal Singh, PPS, DSP, SD, Bhucho, while riding in a government vehicle PB-03-AP-5901 with staff reached at the spot at Khemuana Raod, Jeeda. Upon which, I ASI made Sh. Rachpal Singh, PPS, DSP, SD, Bhucho aware of the circumstances and then Sh. Rachpal Singh, PPS, DSP, SD, Bhucho asked the name and address of the Sikh gentlemen, who disclosed his name as Singh son of Jagraj Singh son of Chand Singh, resident of Jeeda, District Bathinda and the name of the persons, who ran away were disclosed as Tota Singh son of Harbans Singh, Gori Singh son of Kaka Singh, Gurcharan Singh @ Lacka son of Mithu Singh, all resident of Jeeda, District Bathinda along with Alto car. Then Sh. Rachpal Singh, PPS, DSP, SD, Bhucho, issued notice under Section 50 of NDPS Act to the*

*apprehended person Gurjeet Singh son of Chand Singh, resident of Jeeda, District Bathinda and while issuing notice, he told him that "I Rachpal Singh, PPS, DSP, SD, Bhucho, I am posted as such and I am a gazetted officer of the Government of Punjab and am in uniform of DSP and it bears my nameplate. In a white colour plastic bag in your possession, it is doubted that the same contains poppy husk and therefore, you and your vehicle Innova bearing Registration No.PB03-AP-5143 are to be searched under the NDPS Act but you have a legal right available to get yourself searched by a Magistrate or any other gazetted officer or they can be called at the spot and you can be taken to them. The notice was read over to the aforesaid Gurjeet Singh in the presence of the witnesses, who after the same and hearing admitting the same to be correct signed the same and ASI Gora Singh and ASI Gurmail Singh also signed as witnesses. Thereafter, Gurjeet Singh aforesaid gave his consent to Sh. Rachpal Singh, PPS, DSP, SD, Bhucho and said that you have seen the poppy husk and I have confidence in you and you can search me and my Innova car bearing Registration No.PB03-AP-5143, which, upon a consent memo was prepared separately, which was I ASI under the signed by the witnesses. the instructions of Sh. Rachpal Singh, PPS, DSP, SD, Bhucho, unloaded the plastic bags from Innova car No.PB-03-AP-5143 and checked them and poppy husk was recovered. On weighing the 10 plastic bags colour white on a computer scale, weight of each bag came to be 18 kgs. and the bags were given serial No.1 to 10. Total 180 kgs. poppy husk was recovered. Thereafter, I ASI tied the recovered plastic bags and sealed them with my seal GS and Sh. Rachpal Singh, PPS, DSP, SD, Bhucho also put his seal RS. The seals were prepared separately and the seal after used was handed over to ASI Gurmail Singh and the plastic bags duly sealed along with Innova car PB-03-AP-5143 were taken into police custody and the memo was signed by the witnesses. On the personal search of Gurjeet Singh aforesaid currency notes of Rs.450/- were recovered, which was also taken into police possession and the recovery memo was signed by the Gurjeet Singh aforesaid and the witnesses also put their signatures.*

*search of Innova No.PB-03-AP-5143, of ownership were found. The accused Gurjeet Singh aforesaid could not produce any licence or permit for possessing 180 kg. of poppy husk and therefore, has committed an offence under Section 15 (c)/61/85 NDPS Act and therefore Rukka is being sent for registration of case. xxxxx”*

3. Learned counsel for the petitioner submits that the petitioner is in custody since 25.04.2024. Learned counsel has further submitted that out of the 26 prosecution witnesses cited none has been examined till date. Learned counsel for the petitioner has further submitted that the petitioner has not been arrested from the spot in question. Learned counsel has iterated that a somewhat similar placed accused, namely, Gurcharan Singh @ Lacka has been extended the concession of bail by this Court in **CRM-M-3295-2024**. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel has further submitted that the FIR in question pertains to recovery of 180 kgs of poppy husk which is a commercial quantity and, therefore, the bar under Section 37 of the NDPS, 1985 is attracted. Learned State counsel has filed the custody certificate in Court today and has relied upon the involvement of the petitioner in 02 other cases. He has, accordingly, sought for dismissal of the petition in hand.

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

6. The petitioner was arrested on 25.04.2024 and is in custody since then. Till now, 26 prosecution witnesses have been cited but none

have been examined till date. The rival contentions of the parties give rise to debatable issues which shall essentially 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 investigation/trial. Nothing tangible has been brought forward to indicate the likelihood of the appellant absconding from the process of justice or interfering with the remaining prosecution evidence.

6.1 This Court in a judgment titled as *Kulwinder Vs. State of Punjab*, CRM-M-64074-2024 (2025:PHHC:002695); after relying upon the 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) vs. State (NCT of Delhi), 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 *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* 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 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.”*

As per the custody certificate filed by the learned State counsel, the petitioner has suffered incarceration of 1 year, 3 months and 5 days.

Suffice to say, the further detention of the petitioner in custody is not required in the facts and circumstances of the case.

7. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the learned concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/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 cell phone 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/Illaq Magistrate.

(vii) The petitioner shall not in any manner try to delay the trial.

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

**July 31, 2025**

*sailesh*

Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/No