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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-47409-2025
Date of Decision: 25.09.2025

Shabina Khatun @ Sabina Khatun

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHALPresent: Mr. Baljeet Beniwal, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Haryana.

RUPINDERJIT CHAHAL, J (ORAL)

1. Prayer in the instant petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is for grant of regular bail to the petitioner in case FIR No.40 dated 13.02.2025 registered under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Sarai Khawaja, District Faridabad.
2. Brief facts of the present case are that as per the prosecution, on 13.02.2025, SI Udham Singh, along with his fellow police officials was on patrolling duty and on the basis of secret information, apprehended two persons, namely, Mohan Chaudhary and Nagina Mahato, who were found in conscious possession of 27 Kg. 260 grams of Ganja.
3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and she has no concern with

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the said offence. He argued that neither the petitioner was present at the spot nor was named in the FIR. He further argued that during investigation, said co-accused Mohan Chaudhary and Nagina Mahato made a disclosure statement regarding purchasing of the alleged contraband from one Bhola Miya @ Sahib Ali. It has also been contended that the present petitioner was nominated as an accused on the basis of disclosure statement made by the said co-accused Bhola Miya @ Sahib Ali. Apart from the disclosure statement, there is no other evidence to connect the petitioner with the offence in question and it is a trite law that disclosure statement of co-accused during his custodial interrogation is not admissible. No recovery is to be effected from her. Moreover, the petitioner has clean antecedents as she is not involved in any other case. The petitioner is in custody since 14.02.2025. The investigation in the case is complete and challan also stands presented. He further submits that trial will take a long time to conclude and no useful purpose would be served by keeping her behind bars. Therefore, it is urged that the petition deserves to be allowed.

4. On the other hand, learned State counsel has filed the status report in the matter, which is taken on record and while referring to the same, has vehemently opposed the prayer for grant of bail by submitting that the offence committed by the petitioner is serious in nature. He has further submitted that recovery of alleged contraband effected from co-accused falls under the commercial quantity. However, he has not controverted the fact that the petitioner is first time offender as she is not involved in any other case.



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5. As far as the argument of learned counsel for the petitioner regarding nomination of accused on the basis of disclosure statement is concerned, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as '***Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592***', relevant whereof reads as under:

"155. We answer the reference by stating: (i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act (ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS ACT".

6. More recently, the Hon'ble Supreme Court in a judgment titled as '***Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu Vs. State of Gujrat, Narcotics Control Bureau' 2024 INSC 290***', has reiterated the ratio decidendi of the judgment of Hon'ble Supreme Court in the case of Tofan Singh (supra).

7. The Hon'ble Supreme Court while dealing with a plea for grant of anticipatory bail in a case under NDPS Act, 1985; in a judgment titled as '***Vijay Singh vs. The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s)1266/2023 decided on 17.05.2023***' has held as under:

"The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act". His application for anticipatory bail was rejected by the High



Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail. Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose. The petition is allowed. All pending applications are disposed of."

8. The petitioner is sought to be arrayed solely on the basis of disclosure statement of the co-accused. Suffice to say there is no other material available to connect the petitioner with the recovered contraband. The veracity of the disclosure statement made by the co-accused will be subject to comprehensive scrutiny during the course of the trial and same cannot be a ground to decline the concession of regular bail to the petitioner.

9. Having heard learned counsel for the parties at length and after perusing the record of the case, it is evident that the petitioner is in custody for the last more than 07 months; investigation is complete; challan stands filed, and the fact that trial may take a long time to conclude, no useful purpose would be served by detaining her in further custody. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future would be violative of her rights under Article 21 of the Constitution of India.



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10. Reliance is placed upon a judgment in the case of ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***, wherein Hon'ble Apex Court has held that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of her right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "*bail is a rule*" and "*jail is an exception*".

11. Moreover, prolonged detention of the petitioner, without any likelihood of the trial being concluded in the near future, would amount to a violation of their fundamental rights guaranteed under Article 21 of the Constitution of India. The Hon'ble Supreme Court, in ***Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 AIR SC 1648***, while dealing with an NDPS case, held that the principles of fairness embodied under Article 21 override the statutory restrictions on grant of bail under Section 37 of the NDPS Act. Speaking through Justice S. Ravindra Bhat, the Court observed:

"20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors



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the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable . Jails are overcrowded and their living conditions, more often than not, appalling."

12. In view of the above, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned. It is clarified that nothing stated herein shall be construed as an expression of opinion on the merits of the case.

25.09.2025*D.Bansal***(RUPINDERJIT CHAHAL)
JUDGE**

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