



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

CRM-M-49468-2025
Date of decision: 10.09.2025

GAGANDEEP SINGH ALIAS GAGAN ALIAS GAGNA

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present: Mr. Sandeep Kumar Bokolia, Advocate
 for the petitioner.

Mr. Gorav Kathuria, DAG, Punjab.

YASHVIR SINGH RATHOR, J. (Oral)

1. This is first petition filed under Section 438 of BNSS, 2023 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.02 dated 14.01.2023, Police Station Ajitwal, District Moga registered under Section 22 of NDPS Act.

2. Upon notice, the State Counsel has appeared and has opposed the bail. Both the parties have been heard and material placed on the file has been perused.

3. Brief facts of the prosecution case are that on 14.01.2023, ASI Sukhdev Singh, Police Station Ajitwal alongwith other police officials was going towards Kokri Kalan in connection with patrolling duty and when they reached near link road on Main G.T. Road,



Ajitwal. He received a secret information to the effect that Gagandeep Singh @ Gagan resident of Sheikhpura is habitual of consuming and selling drugs and today, he will be coming towards village Ajitwal from the side of village Karyal alongwith Heroin and narcotic tablets and if a barricade is laid, he can be caught red-handed. The information was found to be reliable and offence under Section 22/61/85 of NDPS Act found was to have been committed and ruqa was sent to the Police Station for registration of the FIR and after sometime, the accused was apprehended and 110 loose intoxicating tablets were recovered, which on examination later on were found to be containing Etizolam salt and the contraband weighed 22.33 grams, which falls within commercial quantity. After completion of usual investigation, final report was presented for trial of the accused.

4. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.01.2023 and he was allegedly apprehended on the basis of secret information. However, there is total non-compliance of the provision contained in Section 42 of NDPS Act and the information received by the Investigating Officer was not reduced into writing and no intimation was given to the Senior Police Officers, which was mandatory. Learned counsel next contended that the trial is likely to take some more time to conclude and in view of his prolonged incarceration, petitioner is entitled to be released on bail.

5. On the other hand, learned State Counsel has opposed the bail and argued that the contraband recovered from the petitioner is



22.33 grams Etizolam, which falls within the commercial quantity and rigors of Section 37 of NDPS Act are attracted and in view of the huge recovery, it cannot be presumed that petitioner is not guilty of the offence or that he is not likely to commit the offence, in case he is released on bail. Learned counsel contended that the bail application be dismissed.

6. As per allegations, petitioner was found to be in possession of 22.33 grams of Etizolam. Petitioner is in custody since 14.01.2023 and out of total 13 prosecution witnesses, only 01 witness remains to be examined and trial thus has been delayed and there is also no likelihood of the same being concluded soon. Hon'ble Supreme Court in 2023 Live Law (SC) 533, **Rabi Prakash Vs. State of Odhisha** has held that 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 of the NDPS Act. To the same effect is the law laid down by Hon'ble Supreme Court in 2024 (4) RCR (Criminal) 172, **Ankur Chaudhary Vs. State of Madhya Pradesh** and 2023 AIR(SC) 1648, **Mohammad Muslim alias Hussain Vs. State (NCT of Delhi)** in which Hon'ble Supreme Court while granting regular bail to an accused, from whom commercial quantity of contraband was recovered, has held that grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act. A



Co-ordinate Bench of this Court has also held so in judgment reported as Law Finder Doc Id #2770222 – **Garpawandeep Singh alias Bihari Vs. State of Punjab** decided vide judgment dated 27.08.2025 passed in CRM-M-19408 of 2025 wherein 260 grams of heroin was allegedly recovered. Hon'ble Supreme Court while deciding Special Leave to Appeal (Criminal) No.12788/2023 titled **Nandalal Mondal alias Abhay Mondal Vs. The State of West Bengal**, vide judgment dated 03.01.2024 while taking into consideration the period of custody already undergone by the petitioner/under-trial, the fact that he does not have any criminal antecedents and also keeping in view the prolonged incarceration, ordered release of the petitioner on bail who was also found in possession of 10,000 ml of codeine phosphate - a cough syrup which falls within the commercial quantity.

7. Therefore, taking into consideration the facts and circumstances of the present case and also the ratio of law laid down in afore-mentioned case laws, I am of the opinion that no useful purpose will be served by keeping the petitioner in custody and resultantly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bond and surety bond to the satisfaction of learned Trial Court/Duty Magistrate concerned, on usual terms and conditions. However, in addition to the terms and conditions that may be imposed by the trial Court/Duty Magistrate concerned, petitioner shall remain bound by the following conditions:-



- (i) Petitioner shall not misuse the concession of bail granted to him.
- (ii) Petitioner shall not tamper with any evidence, oral or documentary during the trial.
- (iii) Petitioner shall regularly appear before the trial Court and he will not commit any offence of similar nature while on bail.
- (iv) Petitioner shall deposit his passport, if any, with the trial Court.
- (v) Petitioner shall not in any manner delay the trial.

In case of breach of any of the aforesaid conditions or the conditions that may be imposed by the trial Court or upon any other sufficient cause, the State shall be at liberty to apply for cancellation of bail.

10.09.2025
Priyanka Thakur

(YASHVIR SINGH RATHOR)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No