210 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50366-2026
Date of Decision: 11.09.2026

GURDEV SINGH ALIAS GAJU ...Petitioner

Vs.

STATE OF PUNJAB ...Respondent

CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Abhaysher Singh, Advocate
for the petitioner.

Ms. Navreet Kaur, AAG, Punjab.

VIRINDER AGGARWAL, J. *(Oral)*

The present petition is the second petition filed by the petitioner under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [erstwhile Section 439 Cr.P.C.], seeking grant of regular bail to the petitioner in FIR No. 186 dated 15.09.2025, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Kot Ise Khan, District Moga, Punjab, during the pendency of the trial.

2. As per the prosecution, on 15.09.2025, SI Jarnail Singh along with other police officials was present on patrol duty in the area of Police Station Kot Ise Khan. At about 8:10 PM, a secret informer approached the police party and informed that Karanjit Singh @ Karan and Gurdev Singh @ Gajju were jointly engaged in selling heroin and were present in the Grain Market, Kot Ise Khan, on a black Hero HF Deluxe motorcycle bearing registration No. PB-29-01778, waiting for customers. On receipt of the said information, the police party proceeded to the disclosed place and apprehended both the said accused. During the search, 275 grams of heroin

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was allegedly recovered from the left pocket of the lower worn by co-accused Karanjit Singh @ Karan. On the basis of the said recovery, the present FIR was registered under Section 21 of the NDPS Act. The present petitioner was subsequently implicated under Section 29 of the NDPS Act on the allegation of his involvement in the offence/conspiracy relating to the recovered contraband. The petitioner was arrested on 15.09.2025. The challan/final report was presented before the learned Trial Court on 09.01.2026 and charges have already been framed. The case is presently at the stage of trial.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and that no contraband whatsoever was recovered from his conscious possession. It is submitted that the alleged recovery of 275 grams of heroin was effected from the left pocket of the lower worn by co-accused Karanjit Singh @ Karan and not from the present petitioner. Even the motorcycle allegedly used by the co-accused does not belong to the petitioner. The petitioner is sought to be implicated only with the aid of Section 29 of the NDPS Act, whereas there is no specific material on record showing his conscious possession or any direct role in the recovery. It is further submitted that the alleged recovery already stands effected and, therefore, no useful purpose would be served by keeping the petitioner in further custody. The petitioner has been in custody since 15.09.2025. The challan has already been presented on 09.01.2026 and charges have also been framed. The trial has commenced and, keeping in view the number of witnesses and the stage of the proceedings, its conclusion is likely to take considerable time. Learned counsel further submits that the earlier bail application filed before the learned Special Judge, Moga was dismissed on

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07.11.2025 and thereafter the petitioner approached this Court by filing CRM-M No.3487 of 2026, which was dismissed as withdrawn vide order dated 16.03.2026. The present petition is thus the second petition, and there has been substantial change in circumstances on account of the further period of incarceration and progress of the trial. It is also submitted that the petitioner has no other case under the NDPS Act, is not a proclaimed offender, is a permanent resident of Punjab and undertakes to appear before the learned Trial Court on each and every date, not to influence the witnesses or tamper with the evidence and not to indulge in any offence during the period of bail.

4. Notice of motion.

5. Ms. Navreet Kaur, AAG, Punjab, has put in appearance on behalf of the respondent-State and has filed the custody certificate dated 10.09.2026, which is taken on record, as per which petitioner has already undergone sentence of 11 months and 23 days.

5.1 Learned State counsel opposes the present petition and submits that the alleged recovery of 275 grams of heroin falls within the commercial quantity of the contraband and rigours of Section 37 of the NDPS Act are attracted and the petitioner is required to satisfy the twin conditions prescribed therein. The material connecting the petitioner with the co-accused and the recovered contraband is a matter to be considered during trial.

6. I have heard the learned counsel for the respective parties at considerable length and have carefully perused the paper book as well as the material placed on record with their able assistance.

7. The right to a speedy trial is an integral facet of the fundamental right to life and personal liberty guaranteed under Article 21 of the

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Constitution of India. The constitutional mandate is not confined merely to ensuring a fair trial but also obligates the State to conclude criminal proceedings within a reasonable time so that the process itself does not become punitive.

8. The Hon'ble Supreme Court in ***Hussainara Khatoon v. Home Secretary, State of Bihar, 1980 (1) SCC 81***, authoritatively held that the right to a speedy trial is an essential and integral part of Article 21, and that any procedure which permits prolonged incarceration without expeditious trial cannot be regarded as fair, just or reasonable. The aforesaid principles are in consonance with the Constitution Bench decisions in ***A.R. Antulay v. R.S. Nayak, 1992 (1) SCC 225***, and ***P. Ramachandra Rao v. State of Karnataka, 2002 (4) SCC 578***, wherein it was held that the right to a speedy trial is a fundamental right flowing from Article 21 and constitutional courts are duty-bound to intervene wherever inordinate and unexplained delay results in denial of substantive justice.

9. Recently, the Hon'ble Supreme Court, in ***Tapas Kumar Palit v. State of Chhattisgarh, 2025 SCC OnLine SC 322*** and in ***Arvind Dham v. Directorate of Enforcement, 2026 (2) SSC(Criminal) 271***, the Court categorically held that "the right to a speedy trial, enshrined under Article 21 of the Constitution, is not eclipsed by the nature of the offence." It was further held that prolonged incarceration of an undertrial, without commencement or reasonable progress of the trial, effectively converts pre-trial detention into a form of punishment and cannot be constitutionally sustained. The Court observed that if the State or the prosecuting agency is unable to secure an accused's fundamental right to a speedy trial, it cannot oppose the grant of bail

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merely on the ground of the seriousness of the allegations, as Article 21 prevails over statutory restrictions where continued incarceration becomes oppressive and justified.

10. This constitutional position has acquired greater significance in prosecutions under special statutes containing restrictive bail provisions. The Narcotic Drugs and Psychotropic Substances Act, 1985 is undoubtedly a stringent penal statute enacted to combat the menace of illicit trafficking in narcotic drugs and psychotropic substances. The principle was specifically applied to prosecutions under the NDPS Act in ***Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352***. The Apex Court held that Section 37 of the NDPS Act cannot be construed so rigidly as to compel indefinite incarceration of an undertrial merely because the trial has not progressed. The Court observed that a literal interpretation of Section 37, divorced from constitutional values, would amount to sanctioning punitive detention before conviction. It was emphatically held that where the State is unable to conclude the trial within a reasonable time, the rigours of Section 37 necessarily yield to the constitutional mandate of Article 21. The Court further observed that Section 436A Cr.P.C. applies even to prosecutions under special statutes and constitutes an important legislative safeguard against indefinite pretrial detention.

11. Recently, in ***Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109*** and ***Javed Gulam Nabi Shaikh v. State of Maharashtra, 2024 SCC Online SC 1693***, the Hon'ble Supreme Court reiterated that prolonged incarceration militates against the most cherished fundamental right under Article 21. The Court observed that where the accused has remained in

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custody for an unduly long period and the trial is nowhere near completion, constitutional liberty must prevail over the statutory embargo contained in Section 37 of the NDPS Act. The Court succinctly held that conditional liberty must override the statutory embargo when the constitutional guarantee itself stands threatened. Similarly, the Apex Court has recently reaffirmed these constitutional principles in.

12. Thus, the legal position that emerges from the above authorities is that while offences under the NDPS Act are undoubtedly grave and the statutory conditions governing bail are stringent, the constitutional guarantee of a speedy trial under Article 21 remains paramount. Courts are required to balance the societal interest in effective prosecution with the individual's fundamental right to personal liberty. Prolonged incarceration of an undertrial without meaningful progress in the trial cannot be justified merely by invoking the rigours of Section 37 of the NDPS Act. In such exceptional circumstances, Constitutional Courts are duty-bound to harmonise the statutory restrictions with the fundamental right to personal liberty and ensure that pre-trial detention does not degenerate into punishment before adjudication of guilt. Where delay is inordinate and not attributable to the accused, constitutional courts are empowered to grant appropriate relief so as to prevent violation of Article 21.

13. It is equally relevant to note that while Section 37 prescribes stringent conditions for grant of bail, the NDPS Act itself reflects the legislative intent that such prosecutions should proceed expeditiously. Section 36 empowers the Government to constitute Special Courts for the very purpose of ensuring speedy trial of NDPS offences. Therefore, the statutory

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scheme itself proceeds on the assumption that greater restrictions on bail are constitutionally sustainable only when accompanied by equally expeditious adjudication. Where the State fails to provide the infrastructure necessary for speedy disposal, continued reliance upon Section 37 alone would produce an unconstitutional imbalance between individual liberty and societal interest. Delay defeats that legislative premise. If trials remain pending for years because of systemic inadequacies, repeated adjournments, non-production of witnesses, or institutional delays not attributable to the accused, continued incarceration ceases to be preventive and assumes a punitive character.

14. Be that as it may, the alleged recovery of 275 grams of heroin was effected from the left pocket of the lower worn by co-accused Karanjit Singh @ Karan and admittedly no contraband was recovered from the conscious possession of the present petitioner. The petitioner has been implicated under Section 29 of the NDPS Act on the allegation of his involvement with the co-accused. The question as to whether the material collected by the prosecution is sufficient to establish such involvement is ultimately a matter for consideration during trial. The petitioner has been in custody since 15.09.2025. Investigation already stands completed, the challan was presented on 09.01.2026 and charges have been framed. Thus, further custodial interrogation of the petitioner is not required. The trial has commenced and, considering the number of witnesses yet to be examined, its conclusion is likely to take considerable time. The alleged quantity being commercial in nature, the rigours of Section 37 of the NDPS Act are attracted. However, while considering the present petition, the fact that there is no recovery from the petitioner and that the alleged recovery was effected from the co-accused,

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coupled with the period of incarceration already undergone and the stage of trial, cannot be lost sight of. In view thereof, keeping the petitioner further incarcerate would serve no useful purpose.

15. Accordingly, the present petition is allowed, and the petitioner is ordered to be admitted on regular bail, subject to furnishing requisite bail and surety bonds to the satisfaction of the learned Chief Judicial Magistrate concerned/Illaqa Magistrate/Duty Magistrate, as the case may be, and further subject to the following conditions:-

1. The petitioner shall not, directly or indirectly, make any inducement, threat, or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts before the Court or to the investigating agency.

2. The petitioner shall not tamper with the prosecution evidence in any manner whatsoever, nor shall attempt, directly or indirectly, to influence, intimidate, or contact any prosecution witness.

3. The petitioner shall not leave the territorial limits of India without obtaining the prior permission of the learned Trial Court. In the event he is in possession of a passport, he shall furnish its particulars before the Investigating Officer as well as the learned Trial Court.

4. The learned Illaqa Magistrate/Duty Magistrate, before accepting the bail and surety bonds, shall obtain from the petitioner his permanent residential address as well as present correspondence address, duly supported by appropriate documentary proof. The Investigating Officer shall verify the correctness of the said addresses within 48 hours from the acceptance of the bail bonds and shall place a verification report on the record. In the event either of the addresses is found to be false, fictitious, or incorrect, it shall be open to the prosecution to seek cancellation of the concession of bail in accordance with law.

5. The petitioner shall furnish before the learned Trial Court, either at the time of furnishing the bail bonds or within such period as may be specified by the Court, Permanent Account Number (PAN), Aadhaar Number, particulars of all operative bank accounts, and a declaration disclosing details of immovable properties, if any. Any concealment of material particulars or furnishing of false information shall constitute a valid ground for seeking cancellation of bail in accordance with law.

6. The petitioner shall intimate the Investigating Officer as well as the learned Trial Court, in writing, of any change in residential address or mobile number within seven days from the date of such change.

7. The petitioner shall not commit any offence of a similar nature during the pendency of the trial and shall remain present before the learned Trial Court on each and every date fixed, unless his personal appearance is exempted in accordance with law. He shall not absent himself from the proceedings without obtaining prior permission of the learned Trial Court. In the event of any violation of the aforesaid conditions or his unauthorized absence from the trial proceedings,

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it shall be open to the learned Trial Court to proceed in accordance with law, including cancellation of the concession of regular bail and issuance of appropriate coercive process, including warrants of arrest.

(VIRINDER AGGARWAL)
JUDGE

11.09.2026
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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