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Naseeb Singh vs. State of Punjab

Present : Mr. L.S. Sekhon, Advocate and
Mr. M.S. Sweedel and Mr. G.S. Gill, Advocate
for the petitioner.

Mr. Hemant Aggarwal, DAG Punjab.

1. Present 2nd petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner, in case bearing FIR No.39 dated 28.03.2025, registered for the offences punishable under Sections 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Sadar Ferozepur District Ferozepur.

2. The gravamen of the FIR in question is that the petitioner is an accused in an FIR pertaining to recovery of 02 Kg and 488 grams of heroin.

3. Learned counsel for the petitioner has iterated that the petitioner is in custody since 28.03.2025. Learned counsel has further iterated that the mandatory provisions of the NDPS Act have not been scrupulously complied with, and thus, the prosecution case suffers from inherent defects. Learned counsel for the petitioner has iterated that the trial is delayed and the liability thereof cannot be fastened upon the petitioner. It has been further contended that the petitioner has already suffered incarceration for more than 01 year and 05 months, *whereas*, none of the cited prosecution witnesses have been examined till date. Learned counsel has further urged that, serving police officials, who have been cited as prosecution witnesses, are not turning up to have their testimony(s) recorded in Court despite the issuance of non-bailable warrants. It has been further

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contended that even repeated non-bailable warrants issued against the said witnesses have not fructified yet and, thus, the petitioner cannot be saddled with procrastination of trial.

4. In *oppugnation*, raising submissions in tandem with the reply dated 13.07.2026 by way of an affidavit of Sukhwinder Singh, PPS, Deputy Superintendent of Police (City) Ferozepur, District Ferozepur, learned State counsel has opposed the present petition by arguing that the allegations raised against the petitioner are serious in nature and, thus, he does not deserve the concession of regular bail. Learned State counsel has further submitted that the instant bail plea is barred by the rigors of Section 37 of the NDPS Act, and thus, the same ought to be dismissed. Learned State counsel seeks to place on record custody certificate dated 24.08.2025, in Court today, which is taken on record.

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

6. The petitioner was arrested on 28.03.2025 whereinafter investigation was carried out and challan was presented on 19.09.2025. Total 16 prosecution witnesses have been cited, but none has been examined till date. The present petition is the second attempt by the petitioner to seek the concession of regular bail. The first one was dismissed as withdrawn before this Court on 14.01.2026. A perusal of the *zimni* orders passed by the trial Court, brought forth by the petitioner; especially *zimni* orders dated 20.11.2025, 06.01.2026, 17.02.2026, 08.04.2026, 02.06.2026, 23.07.2026 and 05.08.2026; reflects that trial is procrastinating and folly thereof cannot be saddled upon the petitioner insomuch so, the trial Court has repeatedly issued non-bailable warrants against the witnesses, who are none-else, but

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police officials, yet the said witnesses have not been brought forward for recording their testimony before the trial Court.

6.1. This Court in a judgment titled as ***Kulwinder versus State of Punjab*** passed in ***CRM-M-64074-2024*** (2025:PHHC:002695); after relying upon the *ratio decidendi* 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) 494; Mohd Muslim @ Hussain vs. State (NCT of Delhi) reported as 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.5530-2022 dated 22.08.2022 titled as "Mohammad Salman 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 Madhya Pradesh, 2024(4) RCR (Criminal) 172; has 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."

Suffice to say, the trial is unduly delayed, primarily on account of witnesses (who are police officials) not coming forward despiteailable warrants/non-ailable warrants having been issued against them.

7. There is another aspect *nay* vital aspect of the matter which craves for attention of this Court, i.e., non-appearance of prosecution witnesses, especially when such prosecution witnesses are police officials, despite non-ailable warrants having been issued by the trial Court.

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7.1. There is no gainsaying that the powers of the High Court under Section 528 of BNSS, 2023 are powers which are unbridled, unfettered and plenary in nature aimed at securing the ends of justice. The inherent powers of a High Court are powers which are incidental replete powers, which if did not so exist, the Court would be obliged to sit still and helplessly see the process of law and Courts being abused for the purposes of injustice. In other words; such power(s) is intrinsic to a High Court, it is its very life-blood, its very essence, its immanent attribute. Without such power(s), a High Court would have form but lack the substance. These powers of a High Court hence deserve to be construed with the widest possible amplitude. These inherent powers are in consonance with the nature of a High Court which ought to be, and has in fact been, invested with power(s) to maintain its authority to prevent the process of law/Courts being obstructed or abused. It is a trite posit of jurisprudence that though laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make it impossible to lay down provisions capable of governing every case, which in fact arises. A High Court which exists for the furtherance of justice in an indefatigable manner, should therefore, have unfettered power(s) to deal with situations which, though not expressly provided for by the law, need to be dealt with, to prevent injustice or the abuse of the process of law and Courts. The juridical basis of these plenary power(s) is the authority; in fact the seminal duty and responsibility of a High Court; to uphold, to protect and to fulfill the judicial function of administering justice, in accordance with law, in a regular, orderly and effective manner. In other words; Section 528 of BNSS, 2023 reflects peerless powers, which a High Court

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may draw upon as necessary whenever it is just and equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice *nay* substantial justice between the parties and to secure the ends of justice.

At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in the case of ***Sanjay Dubey vs. The State of Madhya Pradesh and another, 2023 AIR Supreme Court 3263***, relevant whereof reads thus:

“10. Having given the matter our anxious and thoughtful consideration, though the appellant may have a point that, stricto sensu, in a petition under Section 439 of the Code, the concerned Court ought not to travel beyond considering the specific issue viz. whether to grant bail or reject bail to an accused in custody, it cannot be lost sight of that the Court concerned herein was not a ‘Court of Session’ but the High Court for the State of Madhya Pradesh, established under Article 214 of the Constitution of India (hereinafter referred to as the “Constitution”).

11. This singular fact, for reasons elaborated hereinafter, leads us to decline interfering with the Impugned Judgment, but for different reasons. We have no hesitation in stating that had the Impugned Judgment been rendered by a Court of Session, the factors that would have weighed with us would be starkly different.

*12. A little digression is necessitated. The High Court is a Constitutional Court, possessing a wide repertoire of powers. The High Court has original, appellate and suo motu powers under Articles 226 and 227 of the Constitution. The powers under Articles 226 and 227 of the Constitution are meant for taking care of situations where the High Court feels that some direction(s)/order(s) are required in the interest of justice. Recently, in *B S Hari Commandant v Union of India, 2023 SCC OnLine SC 413*, the present coram had the occasion to hold as under:*

*“50. Article 226 of the Constitution is a succour to remedy injustice, and any limit on exercise of such power, is only self-imposed. Gainful reference can be made to, amongst others, *A V Venkateswaran v. Ramchand Sobhraj Wadhwani, (1962) 1 SCR 573* and *U P State Sugar Corporation Ltd. v. Kamal Swaroop**

Tandon, (2008) 2 SCC 41. The High Courts, under the Constitutional scheme, are endowed with the ability to issue prerogative writs to safeguard rights of citizens. For exactly this reason, this Court has never laid down any strait-jacket principles that can be said to have “cribbed, cabined and confined” [to borrow the term employed by the Hon. Bhagwati, J. (as he then was) in E P Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 : AIR 1974 SC 555] the extraordinary powers vested under Articles 226 or 227 of the Constitution. Adjudged on the anvil of Nawab Shaqfath Ali Khan (supra), this was a fit case for the High Court to have examined the matter threadbare, more so, when it did not involve navigating a factual minefield.”)

13. Returning to the present case, though usually the proper course of action of the High Court ought to have been to confine itself to the acceptance/rejection of the prayer for bail made by the accused under Section 439 of the Code; however the High Court, being satisfied that there were, in its opinion, grave lapses on the part of the police/investigative machinery, which may have fatal consequences on the justice delivery system, could not have simply shut its eyes.”

7.2. It has been repeatedly observed that official witnesses in NDPS cases — who, in most cases, comprise police personnel—are consistently failing to appear before the Court to tender their evidence, despite the issuance of bailable warrants and, in numerous instances, even non-bailable warrants. Alarming, there exist several cases where even bailable warrants remain unexecuted for extended periods, resulting in routine adjournments of trials under the NDPS Act solely on this count. This state of affairs reflects a deeply disturbing and systemic lapse in the prosecutorial mechanism, whereby the trial is stalled indefinitely due to the indifference or willful non-cooperation of official witnesses. Such conduct not only frustrates the right of the accused—whether incarcerated or on bail—to a speedy trial as enshrined under Article 21 of the Constitution of India, but also gravely undermines the administration of criminal justice. The

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abdication of duty by official witnesses, who are employees of the State, erodes public confidence in the justice delivery system and emboldens criminal elements by showcasing prosecutorial apathy. It sets a dangerous precedent where procedural laxity takes precedence over judicial efficacy. The resultant delay compromises deterrence and enables the recycling of narcotic offenders back into society during pendency of trial and obstructs the overarching objective of the NDPS Act—namely, the containment of the menace of drug trafficking and substance abuse. In effect, such dereliction by State officials, especially serving police officials, amounts to an affront to both rule of law and societal welfare. Senior police officials—in particular, at the helm of the police force at the district level, i.e. the concerned SSP/SP are also under a bounden duty to monitor the conduct of their subordinate police officials and ensure their presence for tendering evidence before the concerned trial Court. This exhibition of laxity and apathy by the police officials deserves redressal. This seeming abdication of duty by the senior police officials, by not paying any heed to this conduct of police officials, under their supervision, is, thus, a malady to which this Court finds itself unable to turn a *nelson's eye*. A profitable reference in this regard is being made to the *dicta* passed by the Hon'ble Supreme Court in a case titled as ***Hussainara Khatoon and Others versus Home Secretary, State of Bihar, Patna; 1980(1) SCC 98***, relevant whereof reads, thus:

“10. xxxx xxxx xxxx *The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. xxxx xxxx xxxx*”

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The above *dicta* has been further reiterated by a Five Judge bench of the Hon'ble Supreme Court in ***Abdul Rehman Antulay and others versus R.S. Nayak and another; 1992(1) SCC 225***. Furthermore, in a case titled as ***Ranjan Dwivedi versus C.B.I., Through the Director General; 2012(8) SCC 495***, it was observed by the Hon'ble Supreme Court as under:

“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 him or herself. Stated another way, the purpose of both the criminal procedure rules governing speedy trials and the constitutional provisions, in particular, Article 21, is to relieve an accused of the anxiety associated with a suspended prosecution and provide reasonably prompt administration of justice.”

7.3. A deeply disconcerting, and in no uncertain terms condemnable, trend has emerged in which official witnesses fail to appear despite repeated summons, reminders, bailable-warrants and in many cases non-bailable warrants issued by the trial Court. The disregard is such that, in a number of cases, the prosecuting agency is not able to effect the service/execution of these processes even against their serving officials.

The consequence of such non-compliance/disregard is not confined to procedural delay. The trial is stalled, the accused is deprived of a timely adjudication, and the court is compelled to await the convenience or indifference of the very agency that had set the criminal law into motion. The spectacle of a Court repeatedly summoning a public servant to discharge a duty which he is already legally bound to perform, only to find

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the process met with continued absence, is not merely an instance of administrative lethargy. It is a serious affront to the authority of judicial process and, more importantly, an abdication of the prosecution's obligation to bring its own prosecution to a lawful conclusion.

The authorities (vested with the powers of law enforcement) often act with urgency when registering an FIR, and arresting the accused. Yet, once the case reaches trial, the same urgency frequently disappears. Presenting/filing of challan/final report does not conclude the responsibility of the prosecuting agency; it marks the beginning of its duty to diligently prosecute the case. When the process issued by the court, repeatedly, fails to secure attendance of official witness, the issue is no longer an isolated administrative lapse but reflects a serious institutional failure. Judicial time is being spent not on adjudicating the case, but on compelling the prosecution to perform its basic duty.

8. Before delving further into the matter and in view of the above prevenient ratiocination, this Court deems it appropriate to ordain, thus:

(I) The petitioner is ordered to be released on **interim regular bail**, till the next date of hearing before this Court, on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/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.

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- (vi) The petitioner shall give his cellphone 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.
- (viii) The petitioner shall submit, on the first working day of every month, an affidavit, before the concerned trial Court, to the effect that he has not been involved in commission of any offence after being released on bail. In case the petitioner is found to be involved in any offence after his being enlarged on bail in the present FIR, on the basis of his affidavit or otherwise, the State is mandated to move, forthwith, for cancellation of his bail which plea, but of course, shall be ratiocinated upon merits thereof.

In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State shall be at liberty to move for cancellation of bail of the petitioner;

(II) The Director General of Police (Law and Order), Punjab is directed to remain present in Court on the next date of hearing to explain the malady of prosecution witnesses, especially when such witnesses are police officials, not appearing before the trial Court for having their testimony recorded as prosecution witnesses, despite repeated non-bailable warrants having been issued against them.

9. Put up on **21.09.2026**.

10. Be taken up in the urgent cause list.

(SUMEET GOEL)
JUDGE

August 25, 2026
Ajay