

**In the Court of Rashmi Kapila,
Judge, Special Court, Kapurthala.
(UID No.PB00201)**

CNR No. PBKP010038692025

Case No. BA/1588/2025



Presented on : 07-07-2025

Registered on : 07-07-2025

Decided on : 08-07-2025

Jagir Kaur @ Billo, aged about 48 years wife of Kishan Singh, resident of village Lakhan Khole, Tehsil & District Kapurthala.

.....Accused/applicant.

Versus

State of Punjab

.....Respondent.

FIR No.85 dated 05.05.2025
U/s 21/29/61/85 of NDPS Act and 111
BNS.
P.S. Subhanpur, Kapurthala.

Application for bail under Section 187 BNSS (167 (2) Cr.P.C.).

Present: Sh.Narinder Kumar, Advocate, for applicant/accused.
Ms.Meetu Sheanhmar, Addl. PP for respondent-State.

ORDER:-

1. The present bail application under section 187 BNSS has been moved by the applicant/accused in the aforesaid FIR, on the averments that accused/applicant was arrested by the police on 05.05.2025. More than 60 days have been passed, but, the prosecution has failed to present the challan before this Court and in this way, accused/applicant is entitled for bail under the provision of Section 187

BNSS. Therefore, he prayed that the applicant/accused be released on bail.

2. Notice of the bail application was issued to the respondent State and learned Additional Public Prosecutor for the State has contested the bail application on the ground that challan has already been submitted before the Court and prayed for dismissal of the bail application. Main file has been received.

3. This Court has given thoughtful consideration to the rival contention made by both the parties and perused the record.

4. Record perused. The allegations of the prosecution are that 07 grams of Heroin was allegedly recovered from the accused/applicant Jagir Kaur @ Billo when the police party headed by ASI Sukhwinder Kumar No.380/Kpt. apprehended her within the ambit of PS Subhanpur, Kapurthala. Earlier, regular bail application of accused/applicant bearing No.BA/1283/2025 was dismissed by this Court vide order dated 06.06.2025.

5. Report under Section 193 BNSS (173 of Cr.P.C.) was not filed when the present bail application under Section 187 (3) BNSS (earlier 167 (2) Cr.P.C.) was moved. Perusal of the file reveals that accused/applicant was remanded to judicial custody on 06.05.2025 and since then she is in judicial custody. Bail application under Section 187 (3) BNSS (earlier 167 (2) Cr.P.C.) was moved on 07.07.2025 at 10:05 am. Report of Ahlmad was obtained at 10:07 AM on 07.07.2025, who reported that challan in the present FIR has not been presented till the

said date and time. Only after registration of the bail application and issuance of the notice to the State, final report under BNSS was presented on 07.07.2025 at 2:15 pm, much after the presentation and registration of the bail application under consideration. It is also pertinent to mention here that the report under Section 193 BNSS presented against the accused/applicant after filing of the present bail application on her behalf is without FSL report. In these circumstances, by no stretch of imagination, said report can be considered as complete report after completion of the investigation under Section 193 BNSS (earlier 173 Cr.P.C.). Section 36-A of NDPS Act, 1985 as amended upto date clearly provides that in respect of the persons, accused of an offence punishable under Section 19 or 24 or 27A or for offence involving commercial quantity, the reference is in Sub Section II of Section 167 of the Code of Criminal Procedure, 1973 thereof to 90 days where they occurs/shall be constructed as reference to 180 days. Proviso to said Section further incorporates that if it not possible to complete the investigation within the said period of 180 days, the Special Court may extend the said period upto 1 year on the report of public prosecutor indicating the progress of investigation and the specific reasons for detention of the accused beyond the said period of 180 days.

6. Present FIR pertains to 07 grams of Heroin which is non commercial quantity. The report of FSL has not been received till date. Yet, prosecution itself has sought the remand of the accused in respect of the said substance and even the earlier bail application has also been

contested by the State by making reference of Heroin from the accused/applicant. Right to bail under Section 187 (3) BNSS (earlier 167 (2) Cr.P.C.) commonly referred to as default bail or compulsive bail as it is granted on account of default on the part of the investigating agency in not completing the investigation within the prescribed time irrespective of the merits of the case. The contention of the Ld. APP for the State regarding presentation of challan against the accused/applicant is not of any avail on two counts. Firstly, challan has been presented after exercise of right of default bail by applicant/accused by filing the present application. Once accused files an application for default bail under Section 187 (3) BNSS (earlier 167 (2) Cr.P.C.), he is deemed to have availed of or enforced his right to be released on default bail accruing after the after the expiry of the stipulated time for investigation. The said time in respect of the non commercial quantity of NDPS Act is 60 days. Therefore, the right to be released on default bail continues to remain enforceable if the accused has applied for such bail prior to the presentation of challan and after the completion of prescribed period of investigation. It has been made ample clear in large number of judicial pronouncements that subsequent filing of charge sheet once the accused had applied for default bail would not defeat his right.

7. Secondly, in the present FIR, the final report presented much after filing of the present bail application by the accused is without the report of chemical examiner. The report of chemical examiner is an integral and essential part of investigation under NDPS

Act as only this report would lay the foundation of an accused culpability without which it is improbable to form an opinion qua the alleged recovery from the accused to be covered within the scope and ambit of NDPS Act. Reliance is being placed upon the decision of Hon'ble High Court of Punjab & Haryana in case titled as **“Sandeep and Anr. Vs. State of Haryana” Criminal Revision No.2558 of 2023 (O&M) decided on 15.02.2024**. In the aforesaid case, period of 60 days mandatory for filing of challan in the cases of recovery of non commercial quantity as per the provision of NDPS Act r.w.s. 167 Cr.P.C. expired. Application moved by the petitioner for the default bail was dismissed which was challenged. It was observed that once the mandatory period of 60 days for filing of challan in cases of recovery of non commercial quantity expired, filing of the challan in the absence of report of FSL cannot be said to be complete. The petition was accepted and petitioner was ordered to be released on bail. In the present FIR, challan was not even presented whether complete or incomplete till the filing of bail application by the accused. Keeping in view the aforesaid facts and circumstances, bail application under consideration stands allowed and accused/applicant is granted bail under Section 187 (3) BNSS (earlier 167 (2) Cr.P.C.). Accused is admitted to bail on her furnishing personal bonds in the sum of Rs.40,000/- with one surety in the like amount to the satisfaction of learned Area/Duty Magistrate Court. In case the surety is not available, accused/applicant may submit FDR or cash security may also be deposited. Further conditions are:-

1. That the applicant/accused shall attend the Court on each and every date of hearing in accordance with the bonds executed by him/her;
 2. That the applicant/accused shall not leave India without prior permission of the court;
 3. That the applicant/accused shall not tamper with the prosecution evidence.
 4. Applicant/accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
 5. Applicant/accused shall not commit an offence similar to the offence of which he/she is accused, or for the commission of which he/she suspected.
8. It is however clarified that prosecution would be at liberty to move the application for cancellation of bail or recall of the order in case after the receipt of FSL report, the substance or the quantity allegedly recovered from the accused falls in commercial category or the matter pending **“Mohammad Abbas and others Vs. State of NCT of Delhi” SLP CrI. 8164-8166/2021** is decided in favor of prosecution.
9. Copy of this order be sent to the learned Illaqa/Duty Magistrate forthwith under the signatures of Reader for compliance. The Court concerned is directed to send the bail bonds/surety bonds to this

Court after acceptance of the same. A soft copy of the bail order be sent by e-mail to the accused/applicant through the Jail Superintendent forthwith. Accordingly, the present bail application stands allowed and disposed of. Record of this bail application be annexed with the main case file of present FIR.

Pronounced in Open Court:-
Dated: 08.07.2025
Nitish
Directly Typed

(Rashmi Kapila)
Judge, Special Court,
Kapurthala.
UID No.PB00201