

No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>BA1 No. 885 of 2025  <b><u>Hon'ble Alok Mahra, J.</u></b></p> <p>Mr. Saurabh Kumar Pandey and Ms. Sarita Bisht, learned counsels for the applicant.</p> <p>2. Mr. V.S. Pal, learned A.G.A. for the State.</p> <p>3. The applicant – Bhupendra Singh @ Raju, who is in judicial custody in connection with FIR/Case Crime No. 37 of 2025, under Section 8 and 21 of NDPS Act and Section 109 of BNS and Section 3/25 of Arms Act, registered at P.S.-Nanakmatta, District Udham Singh Nagar, has sought his release on bail.</p> <p>4. Heard learned counsel for the parties and perused the records.</p> <p>5. The case of the prosecution is that when the Police party was on patrolling duty, then the applicant on seeing the Police party turned back and drew his motorcycle in a high speed. Finding his action suspicious, the Police party chased the applicant and thereafter in the narrow bridge his motorcycle slipped and the applicant ran towards jungle. On the way, he started firing upon the Police team. The Police team with their skills remained unhurt. Despite warning, when the applicant did not surrender, the Investigating Officer fired a shot at him with his 9 mm pistol and later on, it was discovered that the applicant was hurt and fire shot stuck the applicant below his knee in the right leg. When body of the applicant was checked, 261.56 grams of smack was recovered from his pocket. Applicant was carried to the hospital where he was treated. Since recovery was a chance recovery, therefore, provisions of Section 50 were not applicable.</p> <p>6. To this, learned counsel for the applicant would submit that totally false and fabricated story has been developed by the Police team inasmuch as only one empty cartridge and two live cartridges with country-made pistol were alleged to have been recovered from the possession of the applicant whereas in the FIR, it is alleged that the applicant have shot several</p>

rounds upon the Police team. It is further submitted that as per the contents of the FIR, inventory and the arrest memo were prepared on the spot and FIR was lodged after a gap of almost 6 hours, but, the inventory report and the arrest memo contains the FIR number.

7. Learned State Counsel, on instruction, has submitted that there is no corresponding G.D. entry reflecting the time of registration of the F.I.R. number in inventory report and arrest memo.

8. Learned counsel for the applicant has further submitted that charges were framed on 11.09.2025, but, even after lapse of eight months, not even a single prosecution witness has been examined till date.

9. To support his case, learned counsel for the applicant has drawn the attention of this Court to the judgment passed by Hon'ble High Court of Punjab and Haryana in the case of Kishori Paswan Vs. State of Punjab. For ready reference, paragraph 7, 8 and 9 of the judgment are extracted hereinbelow: -

"7. Hon'ble Supreme Court in Satender Kumar Antil's case (supra) has discussed this serious issue with regard to delay in trial and its effect on the Right to Life of an individual under Article 21 of the Constitution of India. Para 49 of the aforesaid judgment is reproduced as under: -

"49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm.

We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own".

8. Hon'ble Supreme Court in Mohd. Muslim @ Hussain's case (supra) has dealt with this issue with regard to delay in trial and long custody of the accused person vis-a-vis the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.19 and 20 are reproduced as under: -

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably

satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

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

9. The Hon'ble Supreme Court in Dheeraj Kumar Shukla's case (supra) has observed as under: -

"3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed."

10. Though, the alleged contraband shown to be recovered from the possession of the applicant is commercial in quantity and provision of Section 37 of NDPS Act would be applicable, but, considering the fact, as stated above, the whole recovery and the incident appears to be doubtful as arrest memo and inventory contain the FIR number in which there is a gap of about six hours. Furthermore, this Court has to balance the personal liberty of the accused, as stated above, even after a lapse of eight months, not even a single prosecution witness has been examined. Hence, this Court is of the view that it is a case fit for bail and the applicant deserves to be enlarged on bail.

11. The bail application is allowed.

12. Let the applicant be released on bail, on his executing personal bond and furnishing two reliable sureties, each of like amount, to the satisfaction of Court concerned.

**(Alok Mahra J.)**

18.04.2026

Ujjwal