

CRM-M-42736-2026

CNR No: PHHC011252372026

2026:PHHC:186545



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42736-2026

Harsh Kumar

....Petitioner

versus

Union of India Narcotics Control Bureau

....Respondent

Date of decision: October 07, 2026

Date of Uploading: October 08, 2026

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Rakesh Kumar, Advocate for the petitioner.

Mr. Rajiv Sharma (Hissarwala), Special Public Prosecutor with
 Ms. Indu Bala Sharma, Advocate for the respondent – NCB.

SUMEET GOEL, J. (ORAL)

Present petition is the 2nd attempt filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking grant of regular bail to the petitioner, in NCB Crime Case No.51 dated 08.12.2024, registered under Sections 8/ 22/ 29/ 61/ 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station NCB Amritsar, District Amritsar.

2. As per case setup by the Narcotics Control Bureau, the complaint in question pertains to recovery of a commercial quantity of contraband, i.e. 1,37,11,610 tablets (total weighing 5772.584 Kg. *albeit* with strips) containing Alprazolam, Tramadol and Zolpidem Tartrate.

3. The first plea for grant of regular bail to the petitioner was dismissed on merits thereof, by this Court, vide detailed order dated 11.02.2026 passed in CRM-M-46779-2025 and 07 other connected cases.

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3.1. The aforesaid order was assailed by the petitioner (*herein*) before the Hon'ble Supreme Court by way of **Special Leave to Appeal (Crl.) No(s).5411/2026**, which came to dismissed as withdrawn, vide order dated 29.05.2026 and the following order was passed therein:

“Learned senior counsel and learned counsel appearing for the petitioners submitted that permission may be granted to the petitioners herein to withdraw these Special Leave Petitions. Their submission is placed on record.

The Special Leave Petitions are dismissed as withdrawn.”

4. Learned counsel for the petitioner has argued that the petitioner is in custody since 03.01.2025. Learned senior counsel has further submitted that mandatory provisions of the NDPS Act have not been scrupulously complied with, and thus, the prosecution case suffers from inherent defects. Learned senior counsel has iterated that the trial has not progressed with due expedition and the delay thereof cannot be fastened upon the petitioner. Learned counsel has iterated that the petitioner has been implicated, in this case, on the basis of disclosure statement of co-accused, namely, Sonu Singh. Learned counsel has further argued that allegedly the petitioner made deliveries of psychotropic medicines under the directions of one Varun Kumar, but said confessional statement is not permissible in law. Learned counsel has argued that the entire record of the company duly stands supplied to the investigating officer and even the complaint has already been filed by the NCB.

4.1. Learned counsel has iterated that upon culmination of investigation, complaint stands presented and till date, no prosecution witness has been examined. Nothing is to be recovered from the petitioner. The petitioner has suffered incarceration for more than 01½ years and, thus, no useful purpose would be served by keeping the petitioner behind the bars. Thus, regular bail is prayed for.

5. *Per contra*, learned counsel for the respondent – NCB has argued that huge quantity of narcotics contraband has been recovered, in the present case, and the same, being commercial in nature, falls under the provisions of Section 37 of the NDPS Act. Learned counsel has further submitted that petition in hand is barred by the rigors of Section 37 of the NDPS Act and are, thus, liable to be rejected on this score alone. In case, the petitioner is released on bail, there is all likelihood that he may abscond from the process of justice and also interfere with the prosecution evidence/ witnesses. Learned State counsel seeks to place on record custody certificate dated 06.10.2026, in the Court today, which is taken on record.

6. I have heard learned counsel for the parties and have perused the record available on record.

7. It would be apposite to refer herein to a judgment passed by this Court in ***Rafiq Khan vs. State of Haryana and another: 2024: PHHC:054064***, relevant whereof reads as under:

“9. The paramount issue, in any plea for grant of regular bail, is the liberty of an individual. Indubitably, within our society and jurisprudence, liberty is a cherished foundational principle and has fundamental ascendancy over all other attributes of social order. Even within the framework of Constitution, this principle is made conspicuous, inter alia, in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C., 1973 is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Yet, liberty of an individual, the accused, must not transgress the rights of another individual, the victim, in terms of right to dignified everyday life without any imminent fear or threat. Additionally, the rights of the collective of individuals viz. the State/Society at large, also cannot be neglected. Therefore, while countenancing the facts for considering the bail, the rights of the triad of accused, victim and the State (Society at large) ought to be entailed. Ergo, while considering a bail plea, the Court ought to take into account this core concept(s).

9.1 An analytical perusal of Cr.P.C. explicates that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking regular bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions, especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights. The bar contained in Section 362 of Cr.P.C. can, by no stretch of legal imagination, be said to be barring the filing of second/successive regular bail petition.

9.2 *The Hon'ble Supreme Court in case of Babu Singh case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one, later in point of time. Similar is the ratio decidendi of the judgment of Hon'ble Supreme Court in Kalyan Chandra Sarkar (supra). Ergo, it can be safely inferred that the decision of a Court qua regular bail petition is essentially an interlocutory order and hence the postulation of res judicata does not apply to its realm.*

9.3 *The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive regular bail petition(s).*

9.4 *The concordant legal position is that the essential pre-requisite for consideration of second/successive regular petition is the material/substantial change in circumstances and factors of alike nature. Indubitably, the further period of incarceration suffered by the petitioner-accused after rejection/withdrawal of first/earlier plea for bail, pace of trial, the witnesses turning hostile or not supporting prosecution case and changed medical condition(s) of accused would be pertinent factor(s). It goes without saying that these factors are only illustrative in nature and cannot by any means be said to be exhaustive.*

9.5 *No rigid or universal criterion can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may cause a sea of difference. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power is best left to the judicial discretion of a Court, in accordance with the settled norms of our jurisprudence.*

10. *As an epilogue to the above discussion, the following principles emerge:*

I. *Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.*

II. *Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.*

III. *For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.*

IV. *No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).*

V. *In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed."*

8. The present petition is the second attempt to secure regular bail by the petitioner. The first regular bail plea was dismissed on merits thereof, vide detailed judgment dated 11.02.2026 passed in **CRM-M-46779-2025 and 07 other connected cases**. The challenge to the said order before the Hon'ble Supreme

Court by way of **Special Leave to Appeal (Crl.) No(s).5411/2026**, has been dismissed as withdrawn, vide order dated 29.05.2026 (*ibid*).

8.1. The present petition is a successive attempt to secure the concession of regular bail on substantially the same set of facts and grounds. The submissions advanced by learned counsel for the petitioner were very much available for consideration at the time of adjudication of the petitioner's first petition seeking regular bail, which was dismissed vide a detailed speaking order. The only circumstance sought to be projected as a distinguishing feature is the period of incarceration further undergone by the petitioner. However, in the peculiar facts and attending circumstances of the present case, mere prolongation of custody, in the absence of any other supervening circumstance, cannot, by itself, be construed as a valid or sufficient ground to revisit the findings earlier recorded while declining the previous prayer for grant of regular bail. Continued incarceration, without any material change in the factual or legal landscape, does not *ipso facto* entitle an accused to the concession of regular bail. It is trite law that the maintainability of a second or successive petition for grant of regular bail is predicated upon the existence of a substantial, material or supervening change in circumstances occurring after the rejection of the earlier petition. The change must be of such significance as to justify a fresh consideration of the matter and would persuade the Court to take a view different from the one previously adopted. In the case at hand, no such worthy fresh circumstance, either factual or legal, has been brought to the notice of this Court.

8.2. The only changed circumstance(s), after dismissal of the previous bail plea of the petitioner by this Court and the subsequent withdrawal of SLP before the Hon'ble Supreme Court, is that the petitioner has suffered further incarceration for a period of more than 07½ months from the date of dismissal of

previous bail plea by this Court. This extended incarceration of the petitioner, by itself, when seen *vis-à-vis* the nature/ quantity of contraband recovered, is not a ground sufficient to warrant the interference of this Court in the present successive attempt for securing regular bail.

9. Keeping in view of the factual *milieu* of the case in hand; especially the absence of any fresh or supervening circumstance since the dismissal of the earlier petition for regular bail by this Court and appeal thereagainst having not been entertained by the Hon’ble Supreme Court; this Court does not find it to be a fit case for grant of the concession of regular bail to the petitioner.

10. In the aforesaid premise, the petition stands **dismissed**.

11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

October 07, 2026
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No