

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.27220 of 2024
Reserved on: 02.09.2024
Pronounced on: 16.09.2024

Birbal Singh @ Bittu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Shalini Singh, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
113	14.06.2023	Lehra, Sangrur	22, 29, 61, 85 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. As per para 22 of the bail application, the petitioner is not involved in any other case, however, as per custody certificate dated 01.09.2024, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	142/2011	29.08.2011	Under sections 63, 65, 68A	Lehra

3. The facts and allegations are taken from the reply filed by the State. On 14th June 2023, based on a chance recovery, the Police seized 38 vials and 250 tablets from the possession of Shavinderpal Singh, the pillion rider of the bike which the petitioner Birbal was driving. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
5. The petitioner's counsel made the following submission:

- That on 14.06.2023, the police party was on their patrolling duty at bus stand Chotiyan and at around 5.50 P.M, they receive secret information that the petitioner along with other co-accused are in habit of selling narcotic medicines and syrup bottles. Toady also they are going to sell some narcotic substances and if nakka is made at Railway Bridge, Chudal, they can be apprehended with the narcotic substances. A Ruqa was prepared u/s 22/61/85 of NDPS Act.

That it is relevant to mention that during the blockade (Nakabandi), a motorcycle bearing registration no. PB-13- AF-2368 of make Hero Honda Splender Plus was coming from the Jakhal side as per the information received and Inspector PW-1 gave them the signal to stop and on seeing the police party hey tried to flee away but was nabbed by the PW-1 with the help of other police officials. On making enquiry, the petitioner and the co-accused disclosed their identities and they were carrying a black backpack and on being searched allegedly had 38 vials of Onerex Cough Syrup and 25 strips of Carisoprodol.

- That on 15.06.2023, the petitioner and the co-accused were produced before JMIC, Moonak and the samples of the seized substances were drawn for the chemical analysis.
- That on 22.06.2023, the samples drawn for the chemical analysis were submitted in the FSL, Mohali.
- That on 23.10.2024, the FSL report was obtained from the FSL, Mohali
- That on 17.11.2023, the report u/s 173(2) of Cr.PC was presented in the court and as many as 15 witnesses has been cited in the Report and only one PW-1 has been examined till date.
- That on 13.03.2024, the bail application u/s 439 Cr.P.C was filed before the Learned Special Court, Sangrur and the same was dismissed without taking into the merits of the case.

6. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

7. The State's counsel opposes bail and refers to para 11of the reply which reads as under:

*"ANTECEDENTS OF THE PETITIONER
BIRBAL SINGH BITTU*

Perusal of record revealed that except the present FIR, nootherFIR is found to have been registered against the petitioner.

A. THE ROLE OF THE PETITIONER.

The present FIR was registered against accused/petitioner namely Birbal Singh @ Bittu and his co-accused Shavinderpal on the basis of secret information received by ASI Satpal Singh Police Post, Chottian. Further investigation was carried out by SI Harminder Singh, who apprehended accused Shavinderpal and Birbal Singh @ Bittu and 38 intoxicant vials marka ONREX 100/100 ML having batch no. ONCS 1972 MFG DATE APR 2023 Expiry date Mar 2025 and 25 strips each containing 10/10 tablets total 250 intoxicant tablets markaCarisoprodol tablets IP Carisoma Tablets having batch no. CAR005C Mfg. Date Dec 2022 Exp. Date Nov. 2025 were recovered from their conscious possession in the presence of Sh. Pushpinder Singh PPS, DSP, Lehra. The recovery of 38 intoxicant vials effected from the petitioner and his co-accused, falls within the category of commercial quantity. So, a specific role is attributed to the petitioner in the commission of present offence.

B. THE EVIDENCE AGAINST THE PETITIONER.

The present FIR was registered against accused/petitioner namely Birbal Singh @ Bittu and his co-accused Shavinderpal on the basis of secret information received by ASI Satpal Singh Police Post, Chottian. Both the accused were apprehended on 14.06.2023 at the spot and from their possession 38 intoxicant vials marka ONREX 100/100 ML and 25 strips each containing 10/10 tablets total 250 intoxicant tablets markaCarisoprodol tablets IP Carisoma Tablets were recovered. Co-accused of the petitioner namely Shavinderpal has mobile phone no. 98764- 20106 and accused Anil Kumar son of Balwan Singh has mobile phone no. is 93501-32064. According to the disclosure made by the Shavinderpal, he used to bring drugs from the above mentioned Anil Kumar. The call detail records of both the mobile phones were obtained, which on examination revealed that there were conversations between the two on 03.06.2023, 07.06.2023 and 14.06.2023.

C. PETITIONER'S CUSTODY CERTIFICATE IN THIS FIR."

The custody Certificate of the petitioner has been obtained from District Jail. Sangrur. Perusal of which revealed that the under trial period of accused petitioner from 17.06.2023 to 05.07.2024 is 1 year and 18 days (one year eighteen days)."

8. It would be appropriate to refer to para 9 of the reply filed to the bail petition, which reads as follows:

“That one parcel containing 1 strip of intoxicant tablets nd another parcel containing 1 intoxicant vial duly sealed with seal bearing impression GPS was sent to FSL. Mohali on 22.06.3023. As per FSL report no. 1964/2023/Taxi/EL/Ph dated 07.08.2023, the ingredient found in the parcels was reported as under:

Parcel no.1	Codeine Phosphate	Found present in the content of the parcel no.1
	Chlorpheniramine Meleate	-do-
	Weight of the sample received	123.42 grams (100 ml x 1.2342 g/ml)
Density of the sample = 1.2342 g/ml		

Parcel No.2	Carisoprodol	Found present in the tablets contained in the parcel no. 2.
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9. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

10. In Md. Aliul Islam @ Aliul Islam @ Aliul vs The State of West Bengal, Criminal Appeal No.1202/2024, the Hon’ble Supreme Court held as under:-

“Heard learned counsel for the appellant in support of the petition and learned counsel for the State and perused the material on record. The appellant is in custody for approximately 1 year 4 months.

During the course of submission it was pointed out by the learned counsel for the appellant that in another case the appellant has been granted bail and therefore, similar relief may be granted by this Court in this case.

The said submission is in response to the submission made by the learned counsel for the respondent-State that this is not the only case in which the appellant has been apprehended. She further submitted that a huge quantity of codeine cough syrup was recovered from the premises (Godown) which has been tenanted by the appellant herein. Considering the facts on record, in our view, the case for bail is made out.”

11. In Nandalal Mondal @ Abhay Mondal vs The State of West Bengal, MANU/SCOR/00327/2024, Hon’ble Supreme Court held as under:-

[2]. The allegations are that the petitioner along with other accused persons were found in possession of two plastic bags a cough containing a total of 10,000 ml. Of codeine phosphate narcotic substance. It further syrup, which is notified as a narcotic substance. It further appears from the contents of the FIR that the petitioner, who was found in conscious possession of two white plastic containers both of which contained 5,000 ml. each of the said liquid. He was apprehended at the spot and is in custody since then.

[3]. The respondent State of West Bengal has filed its counter affidavit, in which it is candidly acknowledged that though the investigation is complete and the chargesheet has been filed, however, the charges are yet to be framed. The prosecution proposes to examine 10 witnesses. The conclusion of trial will, thus, take considerable time. The petitioner is in custody for the last more than one and a half years.. He does not have any criminal antecedents.

[4]. According to learned counsel appearing on behalf of respondent State, the narcotic substance allegedly recovered from the petitioner's possession is of commercial quantity' and, as such, the rigors of Section 37 of the NDPS Act are attracted. We have considered the submission.

[5]. Taking into consideration the period already undergone by the petitioner in custody; the fact that he does not have any criminal antecedents and also keeping in view that the prolonged incarceration will not serve the cause of substantial justice, however, without expressing any views on the merits of the case, we are inclined to release the petitioner on bail at this state. The petitioner is, accordingly, directed to be released on bail subject to the following directions:

(i) The petitioner shall furnish bail bonds to the satisfaction of the Trial Court.

(ii) The petitioner shall appear before the Trial Court regularly on each and every date of hearing.

(iii) In case the petitioner is found involved in any other case under the NDPS Act, in that event, the bail granted to him shall stand cancelled automatically and he shall be liable to surrender immediately.

6. The accordingly. Special Leave Petition stands disposed of accordingly.”

12. In SK. Nasiruddin @ Nasirddin SK. Vs State of West Bengal, Criminal Appeal No.1415 of 2024, the Hon’ble Supreme Court held as under:-

[5]. We note the submission of the learned counsel for the appellant that the appellant was arrested on 12.04.2022 and since then he has been in custody as an under trial prisoner. Even though charges have been framed, trial is yet to begin but there is no likelihood of the trial being taken up and completed within a short period of time. It is also submitted that the appellant does not have any criminal antecedents. It is also brought to our notice that the High Court while rejecting the regular bail application had erroneously recorded that 50 ltrs. of codeine phosphate was recovered from the appellant. This is perhaps a mistake as recovery of only 5 ltrs of codeine phosphate which was mentioned in the FIR.”

13. In Debrata Mondal vs State of West Bengal, Special Leave to Appeal (Crl.) No.14970/2023, Hon’ble Supreme Court held as under:-

[3]. Going by the allegations, 290 bottles of phensedyl syrup was recovered from the possession of the petitioner and the co-accused. The fact is that the co-accused was enlarged on bail by the High Court. The petitioner is in custody since 10.01.2022. Taking into account the aforesaid aspects, we are of the considered view that the petitioner can be enlarged on bail, subject to the terms and conditions to be imposed by the Trial Court. Ordered accordingly. In that regard, the petitioner shall be produced before the Trial Court, forthwith.”

14. In Santarul Islam @ Santa vs The State of West Bengal, Special Leave to Appeal (crl.) No.13169/2023, Hon’ble Supreme Court held as under:-

[3]. Considering the above and looking at the nature of the contraband (100 bottles of Phensedyl cough syrup) which recovered from the accused in FIR No.18/2022. appropriate to grant bail to the petitioner. deem it Accordingly the petitioner (Santarul Islam Santa) be released on bail in connection with the case arising out of Jalangi P.S. Case No.18/2022. Appropriate bail conditions be imposed by the learned Trial Court.”

15. In Narjul Islam @ Najbul Hoque vs The State of West Bengal, Special Leave to Appeal (crl.) No.14172/2023, a Division Bench of Hon’ble Supreme Court held as under:-

“The counsel for the petitioner would submit that the petitioner was arrested on 19.11.2022 in connection with the case arising out of FIR No.477/2022 and the High Court rejected bail for the petitioner under the impugned order on 06.07.2023. It is also pointed out that the 100 bottles of Phensedyt Syrup containing codiene phosphate were seized in the case. Mr. Gupta would then advert to various bail orders passed by this Court in cases with similar kind of contraband.

Admittedly, charges are yet to be framed and the trial is unlikely to conclude in near future. The State counsel by way of explanation submits that charges in this case could not be framed as one of the accused is absconding.

Having regard to the circumstances here and the remote possibility of the trial to conclude in near future and the incarceration of the petitioner for over a year in connection with the contraband in question, we deem it appropriate to grant bail to the petitioner.

Accordingly, the petitioner (Najrul Islam Najbul Hoque) be released on bail. Appropriate terms and conditions for bail is to be imposed by the learned Trial Court.”

16. In Ismaul Sk v. State of West Bengal, MANU/SCOR/00506/2024, Hon’ble Supreme Court holds,

The appellant has undergone incarceration for a period of 1 year and 10 months. The allegation is that 50 bottles containing Phensedyl cough syrup were recovered from the appellant. Another issue is of violation of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Considering the facts of the case and particularly in view of the fact that the trial has hardly made any progress in the sense that only one prosecution witness has been partly examined, the appellant deserves to be enlarged on bail.

Criminal Appeal @ SLP(Criminal)No.14827/2023 Page 1 of 4 For that purpose, the appellant shall be produced before the Trial Court within a period of one week from today. The Trial Court shall enlarge the appellant on bail on appropriate terms and conditions, including the condition of regularly attending the Trial Court and cooperating with the Trial Court for early disposal of the case. The appeal is accordingly allowed.

17. In *Indrajit Mondal @ Piglu v. The State Of West Bengal*, SLP (Crl.) No(s). 8512-2023, decided on 25-01-2024, Hon'ble Supreme Court holds,

[1]. The petitioner is in custody since 17 August 2021.

[2]. FIR No 355 of 2021 was registered at PS Murshidabad for offences punishable under Sections 21(c) and 29 of the Narcotic Durgs and Psychotropic Substances Act 1985. The allegation is that the petitioner was found to be in possession of ten litres of codeine phosphate.

[3]. We have heard Mr Praveen Swarup, counsel appearing on behalf of the petitioner, and Mr Shreyas Awasthi, counsel appearing on behalf of the State of West Bengal.

[4]. Counsel appearing on behalf of the State of West Bengal states that the charges have been framed on 4 January 2024 and the prosecution proposes to examine seventeen witnesses.

[5]. The petitioner is in custody for over two years and five months. There is no prospect of the trial concluding on an early date. Hence, we are of the view that it would be appropriate and proper to release the petitioner on bail subject to such terms and conditions as may be imposed by the Special Court under NDPS Act-cum-ADJ, Second Court Berhampore, Murshidabad in connection with NDPS Case No 166 of 2021. Ordered accordingly.

18. *Saiful Islam v. The State of West Bengal*, MANU/SCOR/60244/2024, Hon'ble Supreme Court holds,

[3]. The counsel would point out that the petitioner is in custody for over two years since he was arrested on 08.01.2022. It is then submitted SLP (CRIMINAL) Diary No(s).39202/2023 that the contraband in question is 112 bottles of Phensedyl Syrup containing codeine phosphate.

[4]. Since bail in similar circumstances was allowed by this Court, following the orders enclosed to the petitioner, we deem it appropriate to grant bail to the petitioner. Accordingly the petitioner (Saiful Islam) be released on bail in connection with the case arising out of FIR No.16/2022. Appropriate bail condition be imposed by the learned Trial Court.

19. In *Shince Babu v. The State of Kerala*, MANU/SCOR/27340/2024, Hon'ble Supreme Court holds,

[2]. The prosecution case is that Accused No.1 (Liju) was found travelling in a private bus from Cherthala to Arookutty and contraband MDMA, weighing 138.750 gms, was recovered from his conscious possession. The said contraband was procured by Accused No.1 with the help of Accused No.2 from Bangalore. The petitioner is nominated as Accused No.4 in the crime. He was arrested on 11.04.2022. The petitioner was granted bail by the Trial Court on 20.09.2022 but on a petition filed by the State of Kerala, challenging the bail order, the High Court cancelled the

petitioner's bail on 13.06.2023. However, liberty was granted to the petitioner to apply afresh before the Sessions Court. The petitioner again applied for bail but his prayer was declined by the Trial Court on 07.07.2023. The petitioner approached the High Court but his first bail application was dismissed on 14.08.2023. His second bail application was turned down by the High Court on 09.10.2023. Meanwhile, Accused No.2 was granted bail by the High Court on 11.10.2023. Seeking parity with the co-accused, the petitioner moved third bail application, which has been rejected by the High Court vide the impugned order dated 09.11.2023.

[3]. We have heard learned counsel for the parties and carefully perused the material placed on record.

[4]. It may be seen from para 6 of the impugned order that the High Court, while declining bail to the petitioner, was largely influenced by the fact that a huge quantity of contraband, which falls in the category of 'commercial', was recovered and as such, the rigors of Section 37 of the NDPS Act are attracted. On a specific query, it is not disputed by learned State counsel that no contraband was recovered from the conscious possession of the petitioner. In such circumstances, it is difficult for us to apply the twin test of Section 37 of the NDPS Act while considering the petitioner's prayer for bail.

[5]. Be that as it may, the petitioner is in custody since 11.04.2022 except for the period from 20.09.2022 to 27.06.2023 when he remained on bail pursuant to the order passed by the Trial Court/Sessions Court.

[6]. It seems that the investigation is complete and the conclusion of trial will take some reasonable time. The petitioner's co-accused are already on regular bail/default bail. As per the record, there are no criminal antecedents of the petitioner.

[7]. Taking into consideration all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail to the petitioner.

[8]. The petitioner is, accordingly, directed to be enlarged on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.

[9]. The petitioner shall remain present before the Trial Court on each and every date of hearing, failing which it shall be taken as a misuse of concession of bail granted to him today by this Court.

20. In *Sk. Nasiruddin v. State of West Bengal*, MANU/SCOR/34261/2024, Hon'ble Supreme Court holds,

[4]. The appellant is charged for the offence(s) punishable under Section 21(C)/29 of the NDPS Act, 1985 and seeks his enlargement on regular bail in a Case arising out of FIR No. 219 of 2022 dated 12.04.2022, registered at P.S. Raghunathganj, Jangipur Police District, Murshidabad, West Bengal.

[5]. We note the submission of the learned counsel for the appellant that the appellant was arrested on 12.04.2022 and since then he has been in custody as an under trial prisoner. Even though charges have been framed, trial is yet to begin but there is no likelihood of the trial being taken up and completed within a short period of time. It is also submitted that the appellant does not have any criminal antecedents. It is also brought to our notice that the High Court while rejecting the regular bail application had erroneously recorded that 50 ltrs. Of codeine phosphate was recovered from the appellant. This is perhaps a mistake as recovery of only 5 ltrs of codeine phosphate which was mentioned in the FIR.

[6]. Keeping in view all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail.

21. In Md. Aliul Islam @ Aliul Islam @ Aliul vs The State of West Bengal, Criminal Appeal No.1202/2024, the Hon'ble Supreme Court held as under:-

“Heard learned counsel for the appellant in support of the petition and learned counsel for the State and perused the material on record. The appellant is in custody for approximately 1 year 4 months.

During the course of submission it was pointed out by the learned counsel for the appellant that in another case the appellant has been granted bail and therefore, similar relief may be granted by this Court in this case.

The said submission is in response to the submission made by the learned counsel for the respondent-State that this is not the only case in which the appellant has been apprehended. She further submitted that a huge quantity of codeine cough syrup was recovered from the premises (Godown) which has been tenanted by the appellant herein. Considering the facts on record, in our view, the case for bail is made out.”

22. In Subhashri Das @Rana @ Subhoshree vs The State of West Bengal, Special Leave to Appeal (Crl.) No.15284/2023, a Division Bench of Hon'ble Supreme Court held as under:-

“The accusation is that the petitioner was found in possession of 60 bottles of Phensedyl Syrup (100 ml in each bottle). The charge sheet was filed on 31.8.2022. The petitioner has been in custody since 12.3.2022. The application for bail filed by the petitioner was rejected by the High Court and hence this special leave petition.

Heard learned counsel for the petitioner and also counsel for the Respondent-State. Taking note of the nature of the accusation and the fact that the petitioner is in custody since 12.3.2022, we are of the considered view that the petitioner can be ordered to released on bail subject to the terms and conditions to be imposed by the Trial Court. Ordered accordingly. The

petitioner shall be produced before the Trial Court forthwith for compliance with the order.”

23. In Mithun Sk. & Anr. Vs The State of West Bengal, Criminal Appeal No.1200/2024, the Hon’ble Supreme Court held as under:-

“The appellants have been booked for the crime registered pursuant to FIR No.158 of 2022 dated 26.07.2022 lodged with Police Station Sagarpara, District Murshidabad, under Section 21(C)/29 of the NDPS Act, 1985. The High Court noted that the narcotic substance i.e. 388 bottles of phensedyl syrup containing codeine phosphate which is above commercial quantity was recovered from the appellants and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

Heard learned counsel for the parties.

We have perused the counter affidavit filed by the respondent-State.

It is submitted by the learned counsel for the appellant(s) that the appellants were not in conscious possession of the offending material and that the prosecution has not complied with the requirements of Section 52-A of the Act, 1985. Further, the appellants are in jail since 26 July 2022. Therefore, the appellants may be granted bail during the pendency of the trial.

However, learned counsel for the respondent submitted that the recovery has been made from the appellants herein.

Considering the above facts on record, in our view, the case for bail is made out.”

24. In Indadul Shah vs The State of West Bengal, Special Leave to Appeal (Crl.) No.12670/2023, a Division Bench of Hon’ble Supreme Court held as under:-

“The petitioner was arrested on 27.10.2022 in furtherance of an FIR dated 27.10.2022 for offences punishable under Section 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He was found in possession of 70 bottles of 100 ml. Phensedyl.

We notice from the record that charge-sheet has already been Filed on 20.04.2023. There is no likelihood of the trial being taken up and completed within a short period of time. There are no criminal antecedents involving the petitioner herein.

Considering the facts and circumstances, we are inclined to grant bail. The petitioner is directed to be released on bail in connection with FIR No. 334 of 2022 registered at Police Station Jalangi District Murshidabad subject to such terms and conditions as may be imposed by the Trial Court.”

25. In Hanef Kharsani @ Hanef Sheikh vs Union of India, the Hon’ble Supreme Court held as under:-

“The appellant Hanef Kharsani @ Hanef Sheikh has been booked for the crime registered pursuant to NCB Crime No.

07/NCB/KOL/2023 dated 09.02.2023 in respect of offence punishable under Sections 8 (c) and 21 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act'). The appellant preferred an application under Section 439 of the Code of Criminal Procedure, 1973 before the High Court seeking bail in the instant crime. The High Court noted that the narcotic substance i.e. 415 bottles of Phensedyl Syrup containing codeine phosphate which is above commercial quantity was recovered from the appellant and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

It is submitted by the learned counsel for the appellant that the appellant was not in conscious possession of the offending material and that the prosecution has not complied with the requirements of the NDPS Act. Further, the appellant is in jail for approximately one year and two months and the trial is not likely to be completed in the near future. Moreover, in certain identical cases, the accused have been granted relief of bail by this Court. Therefore, the appellant may also be granted bail during the pendency of the trial.

Learned counsel for the appellant also brought to our notice the fact that on completion of the investigation, the charge sheet has been filed and there are seven witnesses but the trial has not yet commenced.

However, learned ASG appearing for the respondent submitted that this is not a fit case for grant of bail inasmuch as the quantity which has been recovered is over and above the commercial quantity and it has become a regular feature in that part of the country where enormous amounts of Phensedyl Syrup containing codeine phosphate is being recovered and, therefore, the application seeking bail may be dismissed.

Considering the facts on record, in our view, the case for bail is made out."

26. In Ripon Seikh & ors. Vs State of West Bengal, Special Leave to Appeal (Crl.) No.16663/2023, a Division Bench of Hon'ble Supreme Court held as under:-

[4]. On the other hand, having regard to the duration of custody since the petitioners were arrested on 23.11.2022 and the nature of Contraband i.e., 73 bottles of Phensedyl Syrup containing Codeine Phosphate recovered from the joint possession of the four accused, we deem it appropriate to grant bail to the petitioners Ripon Seikh, Sahin Seikh and Babu Sk, in connection with FIR No. 310 of 2022 registered at P.S. Sagarparara, District Murshidabad. Appropriate bail conditions be imposed by the learned Special Court, Murshidabad. It is ordered accordingly.

27. In Nijam Sheikh @ Md. Nijam SK @ MD Nizam SK vs The State of West Bengal, MANU/SCOR/52031/2024, the Hon'ble Supreme Court held as under:-

"The appellant Nizam Sheikh Md. Nijam Sk Md. Nizam SK has been booked for the crime registered pursuant to FIR

No.90/22 dated 19.03.2022 lodged with Police Station Lalgola, District Murshidabad, under Section 21(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act' for short). The High Court noted that the narcotic substance i.e. 55 bottles of phensedyl syrup containing codeine phosphate which is above commercial quantity was recovered from the appellant and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

Heard learned counsel for the appellant and counsel for the respondent-State.

It is submitted by the learned counsel for the appellant that the appellant was not in conscious possession of the offending material and that the prosecution has not complied with the requirements of Section 52-A of the NDPS Act. Further, the appellant is in jail since 28.03.2022 and the trial is not likely to be completed in the near future. Therefore, the appellant may be granted bail during the pendency of the trial.

Learned counsel for the Respondent-State submitted that recording of evidence is to be commenced from tomorrow (i.e. 16.04.2024) and there are only eight (08) witnesses as per the charge sheet and the trial would be completed expeditiously. Therefore, at this stage, the appellant need not be released on bail.

It was further submitted that the other seven (07) co-accused who were granted bail, are not cooperating with the trial of the case and therefore, this is not a fit case where bail may be granted to the appellant herein.

Considering the facts on record, in our view, the case for bail is made out."

28. In Moidul Sarkar vs The State of West Bengal, Special Leave to Appeal (Crl.) No.15668/2023, Hon'ble Supreme Court held as under:-

[3]. Having considered the duration of custody and the nature of Contraband i.e., 320 bottles of Phensedyl Syrup seized from the petitioner, we deem it appropriate to grant bail to the petitioner Mohidul Sarkar in connection with FIR No. 224 of 2022 registered at P.S. Sagarpara. The similar orders passed by this Court in SLP (Criminal) No. 12911 of 2023 on 22.01.2024 and Criminal Appeal No. 409 of 2024 on 25.01.2024 also noted. are Appropriate bail conditions be imposed by the learned Special Court, Murshidabad. It is ordered accordingly.

29. In Saniya Bibi @ Soniya Bibi vs The State of West Bengal, Special Leave to Appeal (Crl.) No.2354/2024, Hon'ble Supreme Court held as under:-

[3]. Mr. Dibyadyuti Banerjee for the petitioner points out that the Contraband in question is 105 bottles of Phensedyl Syrup and the petitioner, who is a lady, is in custody for about 2 years 3 months since he was arrested on 24.01.2022. That apart, the next date of trial is fixed on 23.07.2024 and although 16 witnesses are cited, not a single witness is examined so far.

[4]. Notice in this case was issued on 04.03.2024 and today the State counsel prays for time to file counter affidavit.

[5]. Having considered the circumstances and more particularly the duration of custody, the nature of the Contraband and the unlikely possibility of the trial getting concluded on an early date, we deem it appropriate to grant bail to the petitioner Saniya Bibi@ Soniya Bibi in connection with the FIR No. 30 of 2022 dated 24.01.2022 registered with P.S. Jalangi, District Murshidabad. It is ordered accordingly. Appropriate bail conditions be imposed by the learned trial court.

30. In Saddam Hossain vs State of West Bengal, Special Leave to Appeal (Crl.) No.15496/2023, a Division Bench of Hon'ble Supreme Court held as under:-

[2]. Notice in this case was issued on 08.12.2023, with the towing order:-

"... The counsel refers to the FIR 37/2023 to point out that 72 bottles of 100 ml Phensedyl Syrup were seized and since each 5 ml contains 10 mg of codeine phosphate, the total quantity of codeine phosphate in the 72 bottles would be around 14.4 grams. Such quantity is below the stipulated commercial quantity in the Schedule to the NDPS Act.

It is further pointed out that the petitioner has been in custody for 10 months and charges are yet to be framed in the matter.

Issue notice on the plea for bail, returnable in four weeks.

Dasti notice on the standing Counsel for the State, in addition."

[3]. Learned counsel for the state in his turn submits that evidence of witnesses is scheduled to commence in July 2024.

[5]. Looking at the above facts and more particularly the nature of the contraband and the long custody of the petitioner since 23.01.2023, we deem it appropriate to grant bail to the petitioner. Accordingly the petitioner (Saddam Hossain) be released on bail in connection with the case arising out of FIR No.37/2023 registered at P.S. Raninagar, District Murshidabad. Appropriate bail condition be imposed by the learned Trial Court."

31. In Bijon SK @ Golam Murselim vs The State of West Bengal, Special Leave to Appeal (crl.) No.6046/2024, a three Bench of Supreme Court held as under:-

[1]. The petitioner has been denied bail in connection with FIR No 252 of 2022 dated 16 November 2022 lodged at PS Doulatabad, District Murshidabad under Sections 21(c), 22 (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985. The allegation is that the petitioner was the owner of a truck which was alleged to be used for the transport of 9075 bottles of Phensedyl.

[2]. The petitioner is in custody since 5 August 2023. Charges have been framed. The prosecution proposes to examine 23 witnesses.

[3]. Considering the above facts and circumstances, an early conclusion of the trial does not seem possible. Conscious as the Court is of the provisions of Section 37 of the NDPS Act, we are of the view that the petitioner should be released on bail, subject to such terms and conditions as may be imposed by the Special Court under NDPS Act, Berhampore, Murshidabad. Accordingly, the petitioner is directed to be released on bail, subject to such terms and conditions as may be imposed by the Special Court under NDPS Act, Berhampore, Murshidabad in NDPS Case No 226 of 2022.”

32. Given this, the criminal antecedents are also not legal grounds for denying the rigors of S. 37 of the NDPS Act at this stage.

33. Per custody certificate dated 01.09.2024, the petitioner has been in custody since 17.06.2023. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

34. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

35. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

36. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

37. This order is subject to the petitioner's complying with the following terms.

38. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

39. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

40. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

41. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

42. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.
43. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

16.09.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.