



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CRM-M No.1430 of 2025
Date of decision: 17.01.2025**

Gurwinder Singh @ Gurbinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pardeep Kumar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is for grant of regular bail to the petitioner in FIR No.177 dated 11.08.2023 registered under Sections 22(b), Act No.61 of NDPS Act, 1985 at Police Station Lambi, District Sri Muktsar Sahib, Punjab.

2. The present FIR was registered at the instance of ASI Sukhjit Singh with the allegations that on 11.08.2023, he along with other police personnel, was conducting a search and checking operation near Bhai Ka Kera, Baloch Kora, and Majni Kheda. During the operation, they stopped a man named Gurwinder Singh alias Ghoda, who appeared suspicious and was carrying a black plastic bag. Upon questioning, Gurwinder Singh identified himself as a resident of village Tarmala. The police suspected that the bag contained an intoxicating

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substance. Gurwinder Singh was informed of his rights and was given the option to have his search conducted by a Magistrate or a Gazetted Officer, but he agreed to have the search done by the police. A search of the black plastic bag revealed 20 intoxicant tablets of Etizolam (0.5 mg each). The tablets were sealed in a parcel, and a separate memo was prepared for Rs.110 recovered from the accused. The items were taken into police custody, and Gurwinder Singh was charged under Section 22-B/61/85 of the NDPS Act, for possessing intoxicant substances.

4. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case and the alleged intoxicating tablets recovered from the possession of the petitioner do not fall within the ambit of commercial quantity and as such, the embargo under Section 37 of the NDPS Act, would not apply.

5. Learned counsel for the petitioner further referred to the zimini orders (Annexure P-2) and submits that a perusal thereof clearly indicates that the FIR (supra) was registered on 11.08.2023 and till date, only 01 PW has been examined and all the prosecution witnesses are police officials and they are not coming forward and as such, delay in conclusion of the trial cannot be attributed to the petitioner, which has violated the fundamental right of the petitioner enshrined under Article 21 of the Constitution of India. It is further contended that the petitioner is in custody for the last 01 year and 05 months and he is not involved in any other case.

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6. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there is sufficient material to indicate the complicity of the petitioner. Further the contraband has been duly recovered from the conscious possession of the petitioner, however, he could not controvert the fact that the petitioner is behind the bar for almost 01 year and 05 months and only 01 PW has been examined till date.

7. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars from the last 01 year and 05 months. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 16 prosecution witnesses, only 01 PW has been examined till date.

8. A two Judge bench of the Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023*** released the accused on bail after completion of 18 months of custody on account of protracted trial in NDPS case involving commercial quantity of contraband. Reliance in this regard can also be placed upon the judgments rendered by the Hon'ble Supreme Court passed in ***Md. Aliul Islam @ Aliul Islam @ Alius Vs. The State of West Bengal SLP (Crl.) No. 000736/2024, Debrata Mondal Vs. State of West Bengal SLP(Crl.) No. 14970-2023, Santarul Islam @ Santa Vs. The State of West Bengal SLP(Crl.) No.***

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13169/2023, Indrajit Mondal @ Piglu Vs. The State of West Bengal SLP(Crl.) No. 8512/2023, Narjul Islam @ Najbul Hoque Vs. The State of West Bengal SLP(Crl.) No. 14172/2023, Subhashri Das @ Rana @ Subhoshree Vs. The State of West Bengal SLP(Crl.) No.15284/2023, Mithun Sk. & Anr. Vs. The State of West Bengal SLP (Crl.) No.016598/2023, SK. Nasiruddin @ Nasirddin SK. Vs. State of West Bengal SLP (Crl.) No.003402/2024, Indadul Shah Vs. The State of West Bengal SLP(Crl.) No. 12670/2023 , Hanef Kharsani @ Hanef Sheikh Vs. Union of India, Ripon Seikh & Ors. Vs. State of West Bengal SLP(Crl.) No. 16663/2023, Moidul Sarkar Vs. The State of West Bengal SLP(Crl.) No. 15668/ 2023, Saniya Bibi @ Soniya Bibi Vs. The State of West Bengal SLP(Crl.) No. 2354/2024, Saddam Hossain Vs. State of West Bengal SLP(Crl.) No. 15496/2023, Bijon SK @ Golam Murselim Vs. The State of West Bengal SLP (Crl.) No. 6046/2024 and Subhas Vs. The State of West Bengal SLP(Crl.) No. 8823/2019.

9. Further, the culpability, if any, would be determined at the time of trial and as such, no useful purpose will be served by further detention of the petitioner-accused. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India. A two Judge bench of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain vs. State (NCT of Delhi) 2023 AIR SC 1648* has held that the concept of fairness enshrined under Article 21 of

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the Constitution of India would trump the bar on granting bail in cases involving commercial quantity of contraband, as stipulated by Section 37 of the NDPS Act. Speaking through Justice S. Ravindra Bhat, has opined as follows:

*“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.*

*21. **Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.** Jails are overcrowded and their living conditions, more often than not, appalling.” (emphasis added)*

10. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Gurwinder Singh @ Gurbinder Singh is ordered to be released on regular bail during pendency of the trial, on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

11. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The

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learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

17.01.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No