



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
207

CRM-M-4396-2024 (O&M)
Date of decision: 17.02.2025

Akshay Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dhirinder Chopra, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No.0065 dated 15.06.2023 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (Section 27 of the NDPS Act added later on) at Police Station Anaj Mandi, District Patiala.
2. As per the allegations in the FIR, on 15.06.2023, the petitioner was apprehended by police of Police Station Anaj Mandi, Patiala, while he was allegedly found in conscious possession of 1516 intoxicant capsules having SPASCORE+ inscribed on them containing salt Tramadol Hydrochloride. Further, on 16.06.2023 upon urine examination for dope test of the petitioner, he was found positive for Buprenorphine and Tramadol. Accordingly, the petitioner was booked



under Section 22/27/61/85 of the Narcotic Drugs & Psychotropic Substances Act. Thereafter, the impugned FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that the mandatory procedural safeguards under the NDPS Act were not adhered to, thereby vitiating the alleged recovery. He submits that no independent witness was associated at the time of search and seizure, raising serious doubts about the prosecution's case. He further submits that there is no evidence to suggest that he was engaged in the sale or distribution of alleged contraband.

4. Learned counsel for the petitioner further submits that there are total 16 prosecution witnesses cited in the list of witnesses, out of which, 05 PWs have been examined till date and the trial is likely to take long time in conclusion. Learned counsel further contends that the petitioner is in custody since 15.06.2023 and in view of the non-compliance with statutory provisions, lack of independent corroboration, and absence of any direct evidence linking the petitioner to alleged contraband, he is entitled to the concession of bail.

5. *Per contra*, learned State counsel has filed custody certificate today in the Court which is taken on record and he opposes the prayer made by learned counsel for the petitioner on the ground that commercial quantity of illegal drugs have been recovered from the conscious and exclusive possession of the petitioner and he is involved in one more case, however, he could not controvert the fact that the



petitioner is in custody since 15.06.2023 and out of total 16 prosecution witnesses, only 05 PWs have been examined so far.

6. 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 08 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, 05 PWs have been examined and 01 given up so far.

7. 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. 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.

8. 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 petitioners in further detention without the prospect of the trial being concluded in the near future, would be violative of their 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 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)

9. A two Judge Bench of Hon'ble Supreme Court in **“*Satender Kumar Antil vs. CBI*”, (2022) 10 SCC 51**, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never



be an impression that it is a police State as both are conceptually opposite to each other.”

10. Further keeping in view the law laid down by the Hon’ble Supreme Court of India in **“Prabhakar Tewari vs. State of U.P. and another”** 2020 (1) R.C.R. (Criminal 831) and **“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”**, 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

11. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Akshay Kumar 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/Duty Magistrate.

12. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

17.02.2025

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No