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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARHCRM-M-5119-2025 (O&M)
Date of Decision: 03.02.2025

DEEPAK BAHADUR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Govinder Singh Brar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking grant of regular bail to the petitioner in case bearing FIR No. 157 dated 20.09.2022 under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") (Section 22 of NDPS Act added later on) registered at Police Station Division No. 6, District Police Commissionerate, Jalandhar.

2. Brief facts of the case are that on 20.09.2022, when the police party was present in connection with patrolling duty and interception of bad elements near the T-point of Satluj Cinema Street, Near Bus Stand, Jalandhar, then one young man was seen walking from the bus stand Jalandhar side having one blue kit bag on his shoulder, who got perplexed on seeing the police party standing in front and after turning back, he started walking with quick steps, on which the complainant-Inspector Raj Kumar, caught him with the help of fellow employees and asked him about his whereabouts, who disclosed his name as

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Deepak Bahadur (petitioner herein). On this, the complainant after serving him notice under Section 50 of NDPS Act told him that the heavy Blue colour Bag on his shoulder was suspected to have some objectionable intoxicant material, due to which the bag on his shoulder was to be searched but he had the legal right to get the bag searched from Magistrate or a Gazetted Officer, the arrangement can be made at the spot. On which, the petitioner said that he wanted to get the bag on his shoulder searched from some Gazetted Officer, on which the complainant called from his phone to Smt. Khushbir Kaur PPS ACP, Model Town, Commissionerate Jalandhar and requested her to come to the spot, on which after some time Smt. Khushbir Kaur PPS ACP, Model Town, Commissionerate Jalandhar reached at the spot along with her staff on official vehicle No. PB-08-CX-8507 and served notice under Section 50 NDPS Act to the petitioner stating therein that she is Khushbir Kaur PPS ACP, posted at Model Town, Commissionerate Jalandhar and a Gazetted Officer. As the heavy kit bag on his shoulder suspected to have some intoxicant matter, the bag on his shoulder is to be searched but he had legal right that he may get his search done from Learned Magistrate, the arrangement can be made at the spot. On which aforesaid Deepak Bahadur said that he had full faith in her and allowed her to search the bag on his shoulder. On this, the complainant on the instructions of worthy ACP tried to join the passer-bys from nearby in police party after making them aware of the inquiry but everyone shows their compulsion and were not able to join police party. On which, complainant on the instructions of worthy ACP under his essential supervision, in presence of the employees, enlighten the bag from the shoulder of the petitioner and after enlightening it down, the same was searched as per law. Then from the black coloured polythene envelope in

the bag, Charas was recovered. On weighing charas along with polythene



envelope, it was found to be 1 Kilo 25 Gram. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and the alleged contraband recovered from the petitioner is marginally higher than the commercial quantity. The petitioner is behind the bars since 20.09.2022 and even after passing of more than 02 years, the prosecution has failed to conclude its evidence. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Further, the present petition has been filed on account of delay in conclusion of trial. The petitioner has been in custody since long and not involved in any other case. He also submits that on account of delay in conclusion of trial, embargo created by Section 37 of NDPS Act will be dislodged and Article 21 of the Constitution of India would prevail.

4. Per contra, the learned State counsel files the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that the contraband which was recovered from the petitioner, falls within the ambit of commercial quantity. However, he could not controvert the fact that he is not involved in any other case.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 22.09.2022. The final report under Section 173 Cr.P.C. was presented before the concerned Court and subsequently, charges were framed. Currently, the trial is at the stage of prosecution witness and out of 12 PWs, not even a single prosecution witness has been examined till date. The petitioner has already



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conclusion of trial cannot be attributed to him. 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*.

6. Further, the culpability, if any, would be determined at the time of final disposal of the case and as such, no useful purpose will be served by



detention without the prospect of conclusion of trial 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 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)*

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

8. 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



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

(HARPREET SINGH BRAR)
JUDGE

03.02.2025
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>