



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
220

CRM-M-5113-2024 (O&M)
Date of decision: 03.04.2025

Shankar Singh
.....Petitioner

Versus

State of Punjab
.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Sharma, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 439 of Cr.P.C., is for grant of regular bail to the petitioner in FIR No.57 dated 06.05.2023 registered under Sections 22 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (challan presented under Sections 22 and 29 of the NDPS Act and charges have been framed under Sections 21 and 29 of the NDPS Act) at Police Station Tapa Mandi, District Barnala.
2. As per the prosecution case, on 06.05.2023, SI Gurbachan Singh alongwith other police officials in connection with the patrolling and checking of the suspected persons were present at main road Bathinda-Barnala near Mata Dati road Tapa. It was about 5:15 PM, then he has received a secret information to the effect that Shankar Singh (bail applicant) has brought huge quantity of intoxicant tablets from



outer State on his Maruti car bearing registration no. DL-2660 of Silver Colour and he is going to supply the same in the area of Tapa and its surrounding areas via main road Bathinda-Barnala to Rampura. If, a naka be laid at the above said disclosed place, then he can be apprehended alongwith intoxicant tablets along-with car. As the information was credible, the impugned FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that the case of the petitioner is fully covered by the ratio of judgment passed by the Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023.***

He further submits that the present petition has been filed in view of the infringement of petitioner's right enshrined under Article 21 of Constitution of India as the petitioner is behind the bars since 11.05.2023 and has undergone actual custody period of 01 year, 10 months and 22 days and till date, the prosecution has not been able to conclude its evidence.

4. Learned counsel for the petitioner further submits that there are total 20 prosecution witnesses cited in the list of witnesses, out of which, 06 PWs have been examined till date and the trial is likely to take long time in conclusion.

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 the petitioner is a habitual offender as he is involved in one more FIR



No.565 dated 21.11.2021 registered under the NDPS Act and there is sufficient material available on record to prove the complicity of the petitioner. Further, huge quantity of contraband was recovered from the conscious possession of the petitioner, which falls within the ambit of commercial quantity and as such, the petitioner is not entitled for any relief, however, he could not controvert the fact that the petitioner is on bail in FIR No.565 dated 21.11.2021 registered under the NDPS Act.

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 10 months and 22 days. 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 20 prosecution witnesses, 06 PWs have been examined 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 , Haneef Kharsani @ Haneef 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 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



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 Shankar 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/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

03.04.2025

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