



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.5458 of 2025
Date of decision: 04.02.2025

Sanjay Singh @ Ajay

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. D.N. Ganeriwala, Advocate
with Mr. Kanishth Ganeriwala, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana
assisted by SI Ranbir Singh.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this 3rd petition filed under Section 483 of the BNSS, 2023, is for grant of regular bail to the petitioner in FIR No.10 dated 08.04.2023 registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station GRP Sirsa, District GRP Ambala (*wrongly mentioned "Khuian Sarwar, District Fazilka" in the prayer clause of the petition*).

2. Learned counsel for the petitioner submits that the 2nd petition seeking regular bail to the petitioner was dismissed as withdrawn on 06.08.2024 and now, the instant 3rd petition has been filed on account of delay in conclusion of the trial and the petitioner is behind the bars for the last 01 year and 10 months and out of 10 PWs only 02 PWs have been examined.

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2. As per the prosecution case, on 08.04.2023, at around 11:20 hrs, SI Ranbir Singh and his team were performing routine duties at Mandi Dabwali Railway Station when they observed a young man, Sanjay Singh @ Ajay, acting suspiciously while carrying a red backpack. When approached, the suspect appeared nervous and tried to turn back but was immediately apprehended. Upon questioning, he failed to provide any satisfactory explanation. After serving a notice under Section 50 of the NDPS Act, the suspect agreed for a search to be conducted in the presence of a Gazetted Officer. During the search, 4 kg 8 gm of Opium was found inside the backpack, wrapped in a polythene bag. The suspect revealed that he had received the Opium from a person named Sunil from Jodhpur on 07.04.2023, to deliver it to Ferozepur, Punjab. Thereafter, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is merely acting as a courier, unaware of the full nature of the contraband, and he was given Opium by one Sunil from Jodhpur to deliver it to Ferozepur, Punjab. The petitioner is not involved in the manufacturing, distribution, or sale of the narcotics, and his role is limited to that of a courier. He further submits that the petitioner is a young individual and there is no substantial evidence to suggest that he is a habitual offender or involved in organized narcotics trafficking.

4. Learned counsel for the petitioner further submits that there are total 10 prosecution witnesses cited in the list of witnesses, out of

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which, 02 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 opposes the prayer made by learned counsel for the petitioner on the ground that huge quantity of Opium weighing 4 Kg. 8 gm., was recovered from the conscious and exclusive possession of the petitioner, which falls within the ambit of commercial quantity and he is involved in one more case registered under the NDPS Act and as such, the petitioner is not entitled for any relief, however, he could not controvert the fact that the petitioner has undergone actual custody of more than 01 year and 10 months and out of 10 PWs, only 02 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, 09 months and 21 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 10 prosecution witnesses, 02 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

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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 petitioner 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)*

7. 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:

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“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.”

9. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Sanjay Singh @ Ajay 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.

10. 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

04.02.2025

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No