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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARHCRM-M-7494-2025 (O&M)
Date of Decision: 14.02.2025

GURJIT SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. The present petition has been filed under Section 483 of BNSS 2023 seeking grant of regular bail to the petitioner in case bearing FIR No. 87 dated 28.05.2023 (Annexure P-1) registered under Sections 21, 23, 27A of NDPS Act at Police Station Gharinda District Amritsar Rural Punjab.

2. Present FIR has been registered on the basis of memo received from BSF with regard to the fact that one person i.e. present petitioner has been apprehended and from the bag, which was carried by him, is found to have been containing 3.210 KG of Heroin. One drone has also been recovered from the spot and two persons also ran away from the spot. Contraband recovered from the conscious possession of the petitioner falls within the ambit of commercial quantity. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 28.05.2023 and in spite of passing of more than 01 year and 08 months, the prosecution has not been able to examine even a single prosecution witness out of total 16 witnesses cited by the prosecution



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and delay in the conclusion of trial cannot be attributed to the petitioner as he is in judicial custody and delay in conclusion of trial suffocates the right of the petitioner granted under Article 21 of Constitution of India and the petitioner is not involved in any other case.

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 huge quantity of contraband i.e. 3.210 kg of *Heroin* has been recovered from the conscious possession of the petitioner, as such his complicity is duly proved. However, he could not controvert the fact that petitioner has undergone a total custody of 01 years 08 months and 09 days and not even a single prosecution witness has been examined till date and petitioner 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 03.06.2023. 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 16 PWs, not even a single prosecution witness has been examined till date. The petitioner has already undergone 01 year 08 months and 09 days of custody and the delay in 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



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(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 further detention of the petitioner-accused. Keeping the petitioner in further 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-Gurjit Singh 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 directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

14.02.2025

Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No