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

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Date of decision: 23.07.2025

1. CRM-M-8301-2025 (O&M)

Sahil Dhiman

....Petitioner

Versus

State of Punjab

....Respondent

2. CRM-M-8307-2025 (O&M)

Pushpinder Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.P.S. Bungar, Advocate
with Mr. Harnoor, Advocate for petitioner(s)
in both the cases.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

CRM-27918-2025 in CRM-M-8301-2025
CRM-27923-2025 in CRM-M-8307-2025

Prayer in both these applications filed under Section 528 of BNSS, 2023, is for placing on record the correct headnote and prayer clause of the main petitions as inadvertently Sections 61 and 85 of the NDPS Act has been added in the headnote and prayer clause of the main petitions.

Heard.

For the reasons stated in the applications, the same are allowed and the amended headnote and prayer clause of the main petitions are taken on record (in both the cases).

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CRM-M Nos.8301 and 8307 of 2025 (O&M)

1. Vide this common order, I intend to dispose of CRM-M Nos.8301 and 8307 of 2025, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CRM-M-8301-2025.

2. Prayer in both these 2nd petitions filed under Section 483 of the BNSS, 2023 is for grant of regular bail to the petitioner(s) namely Sahil Dhiman and Pushpinder Kumar in FIR No.6 dated 13.01.2024 registered under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Badali Ala Singh, District Fatehgarh Sahib. Both these 2nd petition(s) filed by the petitioner(s) seeking the same relief was dismissed as withdrawn on 24.10.2024.

3. Learned counsel for the petitioner(s) submits that both these 2nd petitions, seeking regular bail to the petitioner(s), have been filed with the changed circumstances as case of the petitioner(s) is squarely covered by the judgment of Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023.***

4. As per the prosecution case, on 13.01.2024, in the area of Guru Nanak Public School, Chunni Kalan, Sahil Dhiman and Pushpinder Kumar, were apprehended by the police and from his possession 135 injections of Buprenorphine IP Leegesic and 135 bottles

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of Pheniramine Maleate Injections, without any permit or license have been recovered. Thereafter, the impugned FIR was registered.

5. Learned counsel for the petitioner(s) *inter alia* contends that both the petitioner(s) have been falsely implicated. The alleged contraband was not recovered from the conscious possession of the petitioners, and there is no sufficient material to establish the requisite *mens rea*. Both the petitioner(s) are first-time offenders with no previous criminal history and they are in custody since 13.01.2024.

6. Learned counsel for the petitioner(s) further submits that there are total 13 prosecution witnesses cited in the list of witnesses, out of which, 03 PWs have been examined till date and 03 PWs have been given up and the trial is likely to take long time in conclusion.

7. *Per contra*, learned State counsel has filed custody certificate(s) today in the Court which are taken on record and he opposes the prayer made by learned counsel for the petitioner(s) on the ground that huge quantity of contraband was recovered from the conscious possession of the petitioner(s), which falls within the ambit of commercial quantity and as such, the petitioner(s) are not entitled for any relief, however, he could not controvert the fact that the petitioner(s) are not involved in any other case.

8. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner(s) are behind the bars from the last 01 year, 06 months and 07 days. Investigation is complete. The final report under Section 173 Cr.P.C.

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was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 13 prosecution witnesses, 03 PWs have been examined so far and 03 PWs have been given up.

9. A two Judge bench of the Hon'ble Supreme Court in *Nandlal Mondal @ Abhay Mondal's case (supra)*, 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*

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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.

10. 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(s)-accused. Keeping the petitioner(s) 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

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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)

11. 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

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

12. In view the discussion above, both the present petitions are allowed. Accordingly, without commenting upon the merits of the case, the petitioner(s) namely Sahil Dhiman and Pushpinder Kumar are ordered to be released on regular bail during pendency of the trial, on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/trial Court.

13. 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.

14. A photocopy of this order be placed on the file of other connected case.

(HARPREET SINGH BRAR)
JUDGE

23.07.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No