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

CRM-M-8231-2025

Date of decision: 04.08.2025

Himanshu alias Himanshu Verma

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Satbir Goripuria, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This is second petition filed under Section 439 of Cr.P.C. (483 of Bharatiya Nagarik Suraksha Sanhita, 2023) seeking regular bail in case bearing FIR No.354 dated 27.06.2023 under Sections 15-C/27-A of the NDPS Act registered at Police Station City Tohana District Fatehabad.
2. The FIR (*supra*) was registered on the basis of allegations levelled in the FIR which is reproduced as under:-

'To, SHO, Police Station City Tohana Jai Hind. Today I, Sub-Inspector and Head-Constable Gurminder Singh no. 26/FTB, Constable Sandeep Singh No. 923 and SPO Rohtash Kumar no. 42 with personal Laptop, Printer boarded on official vehicle No. HR62-8613 whose driver is EHC Balwindra no. 289, were available at Tohana, near HDFC Bank on Chandigarh Road for patrolling and to prevent crime regarding narcotics material. A secret information received that Himanshu son of Paramjit son of Pyara Lal resident of Ram Nagar deals in doda posth (poppy husk), if a quick raid is carried out, a huge amount of poppy husk can be recovered. I, myself, SI trusting the reliability of the information of the informer has prepared and sent a notification under section 42 of NDPS ACT through EHC Balwinder Singh No. 289 to the City Police Station for information. At 7.00 AM, I informed through my mobile having its number 94169-23258 to Dr. Jagsir Singh Assistant Professor IG College on his mobile number 95925-23807, to come to the spot of incident, who appeared at HDFC Bank Chandigarh Road Tohana at around 7.55 AM and was informed about the condition as informed by the informer and thereafter left for Ram Nagar Tohana. The passers-by were requested to be part of the raiding party, all of whom left without revealing their names. After reaching at the location as directed by the informer, knocked the door of the residence, a



young boy came out, on enquiring his name and address, who uttered his name as Himanshu son of Paramjit Singh son of Pyare Lal, resident of Ramnagar Tohana. Thereafter he was made aware of the situations also told to him that I, am SI Radha Krishn No. 59/FTB Crime Investigation Branch Tohana, informs you under section 50 NDPS Act that you Himanshu son of Paramjit Singh son of Pyare Lal resident of Ward no. 4 Ram Nagar Tohana District Fatehabad and we are having suspect of having 'Poppy Husk' in your house. Therefore, you have full right as per NDPS Act to get your house searched before any gazetted officer or magistrate. The duty magistrate is along with us and Notice under Section 50 N.D.P.S. Act, was read out and explained. Thereafter reading and understanding the notice under section 50 NDPS Act verified, that I am Himanshu son of Paramjit son of Pyara Lal resident of Ward No. 4 Ram Nagar Tohana District Fatehabad after reading and understanding the notice given by you, that I got my reply notice verified that I want to get my house search in front of any gazetted officer who is along-with you, so you can search my house. That the reply notice was drafted under section 50 NDPS ACT. On the Notice and Reply Notice under section 50 NDPS Act the accused Himanshu and the witnesses has signed their respective signatures. The search of the house of Himanshu son of Paramjit Singh, a resident of Ramnagar Tohana, was conducted accordingly and during the search, four plastic gunny bags were found in the gallery in front of the built toilet outside the drying room. I opened the mouth of the each four gunny bags according to the directions of Dr. Jagsir Singh Assistant Professor I.G.College Tohana, one by one and open their inlet and recovered garbage of the Poppy husk. Thereafter, tied the inlet/mouth of all the four gunny bag with the thread, the gunny bags were weighed on the computer weighing machine while brought the computerised weighing machine from the officials vehicle and found the weight of the first gunny bag was 15 kg 160 grams, the weight of the second bag was 14 kg 210 grams, the weight of the third bag was 16 kg 390 grams and the weight of the fourth bag was 12 kg 230 grams. The weight of the total poppy husk including four gunny bag was 57 kg 990 grams. All four bags were marked from 1 to 4. A parcel of the mobile phone OPPO Reno 2F of the accused Himanshu was made Them After recovering all four-gunny bag and the parcel of the mobile phone were got sealed with the stamp of RK/3 by me and along with a sample seal were prepared. Sample seal after its use was handed over to HC Gurminder Singh No.26. Dr Jagsir Singh Assistant Professor IG College Tohana has also sealed the recovered four-gunny bags, parcel of mobile phone and sample seal with the stamp of SN/1 and kept with him after the use of the stamp. The recovered Poppy husk along with the four-gunny bag weighing 57 Kilo 990 gram and one numbered parcel Mobile marked OPPO Reno 2F sealed with stamp RK/3 and SN/1 with sample seal were taken into police custody as property of the case vide MEMO OF Seizure. The aforesaid accused Himanshu and witnesses have signed on the Memo of seizure of property At 9.00 AM, EHC Balwinder Singh No. 289 came back at 09:00 AM from the Police Station City Tohana after registering DDR report under Section 42 NDPS Act. All the four pieces of gunny bag of garbage of poppy husk and parcel of Mobile sealed with the seal RK/3 and SN/1, Sample Seal, and Memo of Seizure of case property were verified by Dr. Jagsir Singh Assistant Professor I.G. College Tohana. Mr. Himashu son



of Paramjit Singh, resident of Ward No. 4, Ramnagar Tohana, has committed the crime under Section 15C-61-85 of NDPS Act by keeping garbage of poppy husk in his possession, therefore, by preparing a written report on his laptop, SPO Rohtash Kumar no. 42 has been sent to police station for registration of the case. After the registration of the case the case number to be notified. The special report was sent in the service of District Magistrate, Senior authority/officers, and Superintendent of Police, Fatehabad by hand through special dispatcher. I, myself SI along with fellow officials with the case property is available at the incident spot. Today at Ramnagar Tohana Sd/- Radha Krishan SI, No. 59/FTB Crime Investigation Branch Tohana Date 27.06.2023 at Time 10.15AM mobile number 9416923258. Today on receipt of the notification at police station has registered the case vide case No. 354 dated 27.06.2015 under section 15C, 61, 85 of ND & PS Act at police Station Tohana and the copy of the FIR were prepared. After preparing the copy of the FIR special report is being sent by hand in the service of District magistrate and the senior officials through a special dispatcher SPO Ramdiya No. 229. The original information copy with the case file is being to investigating officer through the receipt SPO Rohtash Kumar No 42 at the spot of incident. For further investigation ASI Dalbir Singh No.15 was informed through Telephone.'

3. Learned counsel for the petitioner *inter alia* contends that first petition was dismissed on 28.10.2024 and the present petition has been filed as the case of the petitioner is squarely covered by the ratio of law laid down by the Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023.*** The petitioner has undergone actual custody of 02 years and 01 month and till date, out of 21 prosecution witnesses, only 02 witnesses have been examined. The petitioner is behind the bars since 27.06.2023.

4. Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground on the ground that alleged recovered contraband in the present case falls within the ambit of commercial quantity, as such, an embargo under Section 37 of the NDPS Act is applicable in the present case. He further submits that the petitioner is involved in three more cases and does not entitle to any relief. However, he could not controvert the fact that the



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petitioner is behind the bars for the last 02 years and 01 month and till date, out of 21 prosecution witnesses, only 02 have been examined.

5. A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. 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."

6. After perusing the record of the case with the assistance of the learned State counsel, it transpires that the petitioner is behind the bars since 27.06.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 02 out of 21 prosecution witnesses have been examined.

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-**



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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 petitioners 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)*

9. In cases where the recovery only marginally breaches the threshold for commercial quantity of the alleged contraband, this Court has found it proper to grant regular bail. Reference in this regard can be made to the judgments rendered by this Court in ***Davinder Singh alias Baba vs. State of Punjab*** in CRM-M-64821-2023 decided on 25.01.2024, ***Gurmeet Singh vs. State of Punjab*** in CRM-M-1007-2024 decided on 15.01.2024, ***Ranjti Singh @ Ranjit Kumar vs. State of Punjab*** in CRM-M-57185-2022 decided on 10.01.2023, ***Jagtar Singh vs. State of Punjab*** in CRM-M-21460-2022 decided on 08.02.2023, ***Harjeet Singh alias Sonu vs. State of Punjab*** in CRM-M-8242-2023 decided on 15.01.2024, ***Jang Kanwar vs. State of Punjab*** in CRM-M-53415-2021 decided on 19.01.2022.

10. Keeping in view the law laid down by the Hon’ble Supreme Court



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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 above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Himanshu @ Himanshu Verma 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.

12. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

04.08.2025

Neha

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