



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

222

CRM-M-9846-2025 (O&M)

Date of decision: 25.02.2025

Jatinder Singh @ Happy

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Prabhjot Kaur Virk, Advocate
for the petitioner.

Mr. S.K. Panwar, Addl. A.G., Haryana.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this 2nd petition filed under Section 483 of the BNSS, 2023, is for grant of regular bail to the petitioner in FIR No. 103 dated 08.05.2023 registered under Sections 15(c), 27/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and Sections 307, 420, 427, 186, 332 and 353 of IPC, at Police Station Uchana, District Jind.

2. The 1st petition filed by the petitioner seeking regular bail in the FIR (supra) was dismissed as withdrawn on 24.07.2024 and this 2nd petition has been filed by the petitioner on account of long incarceration and failure of the prosecution to conclude its evidence.

3. As per the prosecution case, on 08.5.2023, ASI Avtar Singh along other police officials were present near Khatkar Toll Plaza in connection with patrolling and crime detection duty when they received an information that Jitender Singh alias Happy and Gurpeet Singh after



loading huge quantity of Dodapost (poppy husk) from Rajasthan in their volkswagon car bearing registration No.HR-26BW-5174 are going to Cheema Punjab and if immediate raid is conducted, they can be apprehended. Notice under Section 42 of the NDPS Act was sent and ASI Avtar Singh informed ASI Sukhdev Singh, Incharge CIA Staff about the information. Thereafter, ASI Sukhdev Singh along with SPO Sandeep reached at Khatkar Toll Plaza in private vehicle. In the meantime, one car being driven at fast speed was seen coming. On reaching at Toll Plaza, ASI Avtar Singh signalled the car driver to stop the vehicle, but the car driver while driving the car at fast speed, tried to run over the employees with intention to kill them. They saved their lives by jumping here and there. Incharge CIA Sukhdev Singh tried to stop the said vehicle by parking his Balero Camper in the way of the car. However, the driver of the car hit the vehicle in Bolero Camper due to which the vehicle was damaged and it stopped there. The car driver and boy sitting on the next seat tried to run away but were apprehended. On enquiry, they disclosed their names as Jatinder Singh alias Happy and Gurpreet alias Kalu residents of District Sangrur. On checking the damaged vehicle Volkswagon Jetta No. HR-26BW-5174, its front number plate was found broken. One number HR-26BW-5174 was displayed on one side and RJ14CP-0313 on the other. Thereafter, notice u/s 50 of the NDPS Act was served upon Jatinder Singh alias Happy and Gurpreet alias Kalu and search of vehicle No.HR-26BW-5174 was conducted and 7 bags of black colour were recovered from the rear seat



of the vehicle, 6 plastic bag (02 black colour and 04 white colour) were also recovered from the back (dicky) of the vehicle. On checking, total 175 kgs of Dodapost was recovered from all the 13 bags. Two numbers plate were also recovered from under the driver's seat of the vehicle bearing number DLA-CAT-0221. Recovered fake number plates, total 13 plastic bags of Doda post and two damaged vehicle were taken into police possession.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and he is in custody since 08.05.2023 and in spite of passing of more than 18 months, the prosecution has not been able to examine even a single prosecution witness out of total 34 witnesses cited by the prosecution and delay in the conclusion of trial cannot be attributed to the petitioner as he is judicial custody and all the prosecution witnesses are police officials and delay in conclusion of trial would suffocate the right of the petitioner, granted under Article 21 of Constitution of India. He further submits that the co-accused of the petitioner namely Ashok Kumar @ Shoki, has already been granted the concession of regular bail by this Court on 13.02.2025 passed in CRM-M No.18734 of 2024, on account of delay in conclusion of the trial.

5. *Per contra*, the 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 huge quantity of 175 kgs of Dodapost (poppy husk) has been recovered



from his conscious possession. However, he could not controvert the fact that petitioner has undergone a total custody of 01 years 09 months and 10 days and not even a single prosecution witness has been examined till date and the petitioner is not involved in any other case.

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 10 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 34 prosecution witnesses, none has 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 , 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. 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. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Jatinder Singh @ Happy 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.

11. 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

25.02.2025
yakub

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