



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

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CRM-M-9704-2025 (O&M)

Date of decision: 25.02.2025

Tanvir Ahmed @ Ena

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohit Kumar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this 2nd petition filed under Section 439 of Cr.P.C., is for grant of regular bail to the petitioner in FIR No.211 dated 09.10.2022 under Sections 21/22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station City-1, Malerkotla, District Sangrur. The first petition was dismissed as withdrawn on 07.02.2024.

2. Learned counsel for the petitioner submits that the new ground for filing this 2nd petition is that there is a delay in conclusion of the trial and the petitioner has suffered incarceration of more than 02 years and 04 months.

3. As per the allegations in the FIR, on 09.10.2022, Mohd. Aamir @ Bawa and co-accused Shamshad @ Mama Pancher were apprehended by the police party along with Swift Dzire car bearing



registration No.DL-2CAP-1969 and from the polythene bag held by co-accused Shamshad @ Mama Pancher, recovery of 100 grams of heroin along with drug money amounting to Rs.33,000/- was effected. During investigation, on 14.10.2022, on the basis of disclosure statement made by the co-accused, 12 intoxicant vials of Corex were recovered. The co-accused further disclosed that they had purchased 115 grams of heroin @ Rs.1,200/- per gram and 102 strips containing 1020 intoxicant tablets @ Rs.200/- per strip from Tanvir Ahmed (petitioner), who was nominated under Section 29 of NDPS Act being supplier of the contraband.

4. Learned counsel for the petitioner *inter alia* contends that there is total non-compliance of the mandate of the NDPS Act, which violates the fundamental right of the petitioner for fair investigation/trial. Further, the petitioner is behind bars since 07.10.2022 and after passing of more than 02 years, trial of the case has not made any progress and out of 24 prosecution witnesses, only 02 prosecution witnesses have been examined so far. The delay in trial is not attributable to the petitioner, as he is in judicial custody and the same has suffocated his fundamental right as provided under Article 21 of the Constitution of India. Lastly, he submits that the co-accused of the petitioner namely Mohd. Aamir @ Bawa and Shamshad @ Mama Pancher have already been granted the concession of regular bail by this Court on 24.10.2024 and 28.11.2024, passed in CRM-M No.51667 of 2024 and CRM-M No.16540 of 2024, respectively.



5. *Per contra*, 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 commercial quantity of contraband was recovered from the co-accused of the petitioner and the petitioner is the supplier and, as such, he is not entitled to the relief of regular bail. He further submits that the petitioner is a hardcore criminal, facing 12 more cases, out of which 04 cases have been registered under the provisions of the NDPS Act, however, he could not controvert the fact that the petitioner has suffered long incarceration of more than 02 years and out of 24 PWs, only 02 PWs have been examined till date.

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 02 years, 04 months and 12 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 24 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 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. Further keeping in view the law laid down by the Hon’ble Supreme Court 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 discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Tanvir Ahmed @ Ena, 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.

12. 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