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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-12901-2025 (O&M)

Date of Decision: 29.04.2025

DISHANT KUMAR

...PETITIONER

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amarsh Dudeja, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

Harpreet Singh Brar, J. (Oral)

1. This is the second petition filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 seeking grant of regular bail to the petitioner in case bearing FIR No. 409 dated 26.07.2023 registered under Sections 21, 27-A, 29, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Ambala Cantt. District Ambala.

2. Brief facts of the case are that on 25.07.2023, when PSI Rohit Kumar along with police official was present at Gudgudia Nala Pulia Jagadhri Road, Ambala Cantt., a secret information was received to the effect that Dishant Kumar brings *Heroin* from Delhi in his car bearing registration no. HR-85B-3044 on the asking of co-accused Satyam, Warris son of Kamal Kishore, Lakhan Kumar son of Vinod Kumar and Vicky son of Ashok Kumar and he would be bringing heavy quantity of Heroin and in case Nakabandi is laid, he can be apprehended. Upon secret information, *Nakabandi* was done and petitioner-Dishant Kumar was apprehended alongwith car bearing registration no. HR-85B-3044. From his possession commercial quantity of Heroin/Smack



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weighing 1 Kg 13 grams was recovered. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner submits that this is the second petition seeking grant of regular bail to the petitioner and the first petition was dismissed as withdrawn on 28.10.2024. Learned counsel *inter alia* contends that petitioner has been in custody for the last 01 year 08 months and 28 days and he is not involved in any other case. Further the case of the petitioner is squarely covered by the ratio of law laid down by Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl) No(s).12788/2023.***

4. Learned State counsel produces the custody certificate of the petitioner, which is taken on record and *per contra*, opposes the prayer made by the petitioner on the ground that there is sufficient material placed on record to prove the complicity of the petitioner, however, he could not controvert the fact that the petitioner is confined in judicial custody for the last 01 year 08 months and 28 days and out of total 46 Pws, only 01 PW has been examined till date and the 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 31.07.2023 and he is not involved in any other case. 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 46 witnesses cited by the prosecution, only 01 has been examined so far. The petitioner has already undergone a period of 01 year 08 months and 28 days of custody and the delay in conclusion of trial cannot be attributed to him.



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6. 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 @ Nasirdin 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*.

7. 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 petitioner in further detention without the



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prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

8. 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 view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-



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Dishant Kumar 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.

10. 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

29.04.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No