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

CRM-M-21608-2025

Date of decision: 22.07.2025

Nirvail Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This fourth petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.91 dated 16.04.2023 under Sections 21C/27-A/29 of the NDPS Act registered at Police Station Maqboolpura, District Amritsar.

2. The FIR (*supra*) was registered on the basis of secret information that the accused/petitioner was apprehended with 260 grams of *heroin* and has also possessed Rs.5 lakh as drug money, on the basis of the alleged recovery, the FIR (*supra*) was registered.

3. Learned counsel for the petitioner submits that the earlier petition was dismissed on 03.10.2024 and the present petition has been filed on the ground that the case of the petitioner is squarely covered by judgment of the Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023*** as the prosecution has failed to conclude its evidence in spite of the fact that the petitioner has suffered incarceration of more than 02 years and 03 months. He further submits that the



contraband which is allegedly recovered from the possession of the petitioner is marginally higher than the commercial quantity. The recovered contraband is 260 grams and the commercial quantity is 250 grams. The recovery memo indicates that the entire bulk was weighed along with the packing and if the weight of the packing deducted from the actual recovery, the recovered contraband would fall within the ambit of less than the commercial quantity.

4. Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that the alleged recovery falls under the ambit of commercial quantity and the complicity of the petitioner is duly established, as such, he is not entitled to any relief. He further submits that the petitioner is involved in three more cases, however, he could not controvert the fact that the petitioner is on bail in the said cases and behind the bars for the last 02 years and 03 months in the present case and only 01 prosecution witnesses has been examined so far out of 10.

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 for the last 02 years and 03 months. 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 01 out of 10 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner.

7. 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.



8. A two Judge bench of the Hon'ble Supreme Court in *Nandal Mondal @ Abhay Mondal (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 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*.



9. 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 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)*

10. 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**



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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-Nirvail Singh, 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

22.07.2025*Neha*

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