



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

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CRM-M-34874-2024 (O&M)
Date of decision: 17.03.2025

Gaurav Dang

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Bhogal, Advocate
for the petitioner.

Mr. Nitesh Sharma, 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.42 dated 25.05.2023 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and Section 25 of the Arms Act, at Police Station Daresi, District Ludhiana.

2. Learned counsel for the petitioner submits that the 1st petition seeking regular bail to the petitioner was dismissed as withdrawn on 18.04.2024 and this 2nd petition has been filed in view of the changed circumstances specifically on the strength of regular bail granted to identically placed co-accused of the petitioner.

3. As per the prosecution case, on 25.05.2023, in the area of Police Station Daresi, Ludhiana, the police party apprehended the petitioner and after procedural investigation, effected recovery of 265



gms of Heroin without any permit or license and Rs.1,10,000/- drug money along with 01 pistol of 32 bore with 06 live cartridges of 32 bore and TVS Jupiter motorcycle bearing registration No.PB-10FH-1318 and subsequently, FIR (supra) was registered.

4. Learned counsel for the petitioner *inter alia* contends that as per the case set up by the prosecution, the petitioner along with his co-accused namely Sukhjinder Singh were apprehended and 265 gms of Heroin was recovered from the plastic bag thrown on the ground. Further a 32 bore desi pistol was recovered from the co-accused and similarly, another weapon of similar nature was recovered from the possession of the petitioner. Similarly, the identically placed co-accused of the petitioner namely Sukhjinder Singh has already been granted the concession of regular bail on 29.05.2024 passed in CRM-M No.26330 of 2024.

5. Learned counsel for the petitioner further submits that the petitioner is behind the bars since 25.05.2023 and has undergone actual custody of more than 01 year, 09 months and 15 days. He further submits that although the petitioner is involved in one more case registered under the NDPS Act, however, he is on bail in the said case and the alleged contraband is marginally higher than the commercial quantity. Lastly, he submits that there are total 15 prosecution witnesses cited in the list of witnesses, out of which, only 04 PWs have been examined till date and the trial is likely to take long time in conclusion.



6. *Per contra*, learned State counsel has filed custody certificate and status report by way of affidavit of Devinder Kumar, Assistant Commissioner of Police (North), Ludhiana, today in the Court which are taken on record and he opposes the prayer made by learned counsel for the petitioner on the ground that 265 gms of Heroin was recovered from the conscious possession of the petitioner, which falls within the ambit of commercial quantity and as such, the petitioner is not entitled for any relief. Further the petitioner is involved in number of cases, however, he could not controvert the fact that there are total 15 PWs cited in the list of witnesses and only 06 PWs have been produced by the prosecution, out of which 02 PWs have been given up and 09 PWs are yet to be examined and the petitioner is on bail in one more case registered under the NDPS Act.

7. 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 15 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 15 prosecution witnesses, 04 PWs have been examined so far.

8. 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*.

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 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)



10. 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."

11. 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.

12. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Gaurav Dang 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.

13. 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

17.03.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No