



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 22.01.2025

1. CRM-M No.42582 of 2024

Pawan Kumar
State of Haryana
Versus
....Petitioner
....Respondent

2. CRM-M No.46839 of 2024

Mohit
State of Haryana
Versus
....Petitioner
....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pratham Sethi, Advocate
and Ms. Namita Chaudhary, Advocate
for the petitioner in CRM-M-42582-2024.

Mr. Keshav Pratap Singh, Advocate
with Mr. Rajat Mor, Advocate
for the petitioner in CRM-M-46839-2024.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (Oral)

1. This order shall dispose of CRM-M Nos.42582 and 46839 of 2024, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CRM-M No.46839 of 2024.
2. Prayer in both these petitions filed under Section 439 of the Cr.P.C. and under Section 483 of the BNSS, 2023, is for grant of regular



bail to the petitioner(s) namely Pawan Kumar and Mohit in FIR No.223 dated 20.10.2020 registered under Section 22(C)/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Nathu Sarai Chopta, District Sirsa.

3. Learned counsel for the petitioner(s) submits that these are the 3rd petitions filed by the petitioner(s) seeking regular bail. The 2nd petition filed by the petitioner – Mohit was dismissed as withdrawn on 21.03.2024 and the 2nd petition filed by the petitioner – Pawan Kumar was dismissed as withdrawn on 05.03.2024. Learned counsel for the petitioner(s) submits that these petitions have been filed as the prosecution has failed to conclude its evidence inspite of the fact that FIR (supra) was registered in the year 2020 and on account of delay in conclusion of trial, both the petitioners are entitled for grant of regular bail.

4. The brief facts of the case are that on 20.10.2020, both the present petitioners were arrested alongwith 1900 Nrx Tramadol Hydrochloride Diclofenac Sodium Dicylomine Hydrochloride Chlopherniramine Maleate Capsules Parvorin-Spas Ridley Capsules, without any permit or license in the area of Police Station Nathusari Chopta, after complying with the provisions of the NDPS Act. Thereafter, the impugned FIR was registered.

5. Learned counsel for the petitioner(s) *inter alia* contends that both the petitioners have been falsely implicated in the case and suffered incarceration of more than 01 year and 10 months as undertrial



and they are not involved in any other case. They further submits that there are total 15 prosecution witnesses cited in the list of witnesses, out of which only 05 PWs have been examined till date and the trial is likely to take long time in conclusion.

5. *Per contra*, learned State counsel has filed custody certificates of both the petitioners today in the Court which are taken on record and he opposes the prayer made by learned counsel for the petitioner(s) on the ground that huge quantity of contraband was recovered from the conscious possession of the petitioners, which falls within the ambit of commercial quantity and as such, the petitioners are not entitled for any relief, however, he could not controvert the fact that both the petitioners have undergone actual custody of more than 01 year and 10 months as under-trial and they are not involved in any other case, as per the Custody Certificate.

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner(s) are behind the bars from the last 01 year 10 months and 22 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, 05 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 petitioners-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. In view the discussion above, both the present petitions are allowed. Accordingly, without commenting upon the merits of the case, the petitioner(s) namely Pawan Kumar and Mohit are ordered to be released on regular bail during pendency of the trial, on their 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

22.01.2025
yakub

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