



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

**CRM-M-47749-2024
Date of decision: 13.01.2025**

SURJEET SINGH

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amit Arora, Advocate for
Mr. Parminder Singh Kanwar, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in this first petition under Section 483 of BNSS is for the grant of regular bail to the petitioner in case bearing FIR No.64 dated 05.04.2022 under Sections 21-C, 25 & 29 of the NDPS Act (Section 25 NDPS Act deleted later on) registered at Police Station Special Task Force (STF) Wing, District S.A.S. Nagar, Mohali.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that 02 youths Surinder Singh @ Nishan (granted bail vide order dated 05.12.2023 in CRM-M-59885-2023) and Rajwinder Singh @ Raja (since granted bail vide order dated 14.11.2023 in CRM-M-55460-2023) were indulging in the business of selling Heroin in the area of Tarn Taran and Amritsar. They were waiting at the main bye-pass road in a car bearing No.PB46-V-6959, for supplying the same to their customers. If a raid is conducted, both could be nabbed. The police party proceeded to the spot and nabbed the accused. The youth sitting at the driver seat disclosed his



name as Surinder Singh @ Nishan and the person sitting on the adjacent seat disclosed his name as Rajwinder Singh @ Raja. The recovery of 500 gms. of Heroin came to be effected from a box under the arm-rest near the gear box.

3. Learned counsel for the petitioner *inter alia* contends that the main accused, namely, Rajwinder Singh *alias* Raja, in the FIR (supra) from whose possession the alleged contraband was recovered has been granted the concession of regular bail by this Court on 14.11.2023 in case bearing No.CRM-M-55460 of 2023 (Annexure P-1) and another co-accused, namely, Surinder Singh *alias* Nishan has also been granted the concession of regular bail by this Court on 05.12.2023 passed in case bearing No.CRM-M-59885 of 2023 (Annexure P-2). Learned counsel further submits that the petitioner has been falsely implicated in the present case as he was nominated in the present case on the basis of disclosure statement of co-accused, while in police custody, which is at the first instance, inadmissible in evidence. The mandatory provisions of Sections 42 and 50 of NDPS Act have not been complied with in their proper perspective. The petitioner is behind the bars since 26.06.2023.

4. Learned State counsel produces the custody certificate, which is taken on record and *per contra*, opposes the grant of regular bail to the petitioner on the ground that the petitioner is a habitual offender as he is involved in other cases under the NDPS Act. Further, the commercial quantity of contraband has been recovered in the present case. Therefore, in view of the bar contained in Section 37 of NDPS Act, the petitioner is not entitled to any relief. However, he could not controvert the fact that the petitioner is behind the bars since 26.06.2023 and out of 18 prosecution witnesses, only 08 have been examined.



5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind the bars since 26.06.2023. The investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. The trial of the case has not even reached half way mark as out of 18 prosecution witnesses, only 08 have been examined. The petitioner has already undergone 01 year, 06 months and 17 days of custody and the delay in conclusion of trial cannot be attributed him. 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.

6. 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 his rights under Article 21 of the Constitution of India.

7. 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)

8. As far as the issue of the petitioner being a habitual offender is concerned, the Hon'ble Supreme Court in *Prabhakar Tewari vs. State of U.P. 2020 (11) SCC 648* and *Maulana Mohd. Amir Rashadi vs. State of U.P. and another (2012) 2 SCC 382*, has categorically held that the grave and serious allegations leveled against the accused or pendency of other cases against him cannot be the only basis to refuse the prayer of bail.

9. In view of the above, the present petition is allowed and the petitioner-Surjeet 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.

10. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

January 13, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

- | | | |
|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |