



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
207

CRM-M No.49362 of 2024
Date of decision: 30.01.2025

Ram Kirpal Yadav @ Ram Kripal Yadav

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this 2nd petition filed under Section 483 of the BNSS, 2023, is for grant of regular bail to the petitioner in FIR No.32 dated 26.02.2023 registered under Sections 22(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Shambu, District Patiala.

2. The 1st petition filed by the petitioner seeking regular bail was dismissed on 31.01.2024 and the present 2nd petition has been filed on account of delay in conclusion of trial.

3. As per the prosecution case, a secret information was received by the police that one private bus of Vishali Express bearing registration No.UP-43-AT-4038 is coming from Ambala side and is to go to Ludhiana and its driver is Dudh Nath along with Nand Kumar Singh, Ram Kirpal and Dinesh Morya were also in the said bus. They

2025:PHHC:014073



used to smuggle intoxicant tablets in heavy quantity and in the smuggling, the owner and Manager of the transport company were also involved and they have a strong nexus for smuggling the drugs. Accordingly, the FIR (supra) has been registered and a Naka was laid. The said bus was taken into police possession from which recovery of total 49,500 TRAMADOL PROLONGED RELEASE TABLETS IP, 100 mg, TRAMATRUST SR100, which were lying in separate bundles/ plastic bags of boxes kept concealed in different places of the bus, i.e. 25 boxes under the front seat of the bus each box having 50 strips containing 10 tablets each (12,500 tablets), 25 boxes from the shelf above the driver seat of the bus each box having 50 strips containing 10 tablets each (12,500 tablets), 49 boxes from the tool box of the bus each box having 50 strips containing 10 tablets each (24,500 tablets), was effected. Thereafter, the accused Dudh Nath, Nand Kumar Singh, Ram Kirpal and Dinesh Morya have been arrested from the spot.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 26.02.2023 and till date, charges have not been framed and the case of the petitioner is covered by the judgment ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi) 2023 AIR SC 1648***. He further submits that it is a matter of trial, whether the presence of the petitioner on the bus prove his involvement in the alleged drug smuggling operation or not. Learned counsel for the petitioner further submits that the petitioner is not involved in any other

2025:PHHC:014073



case and the trial is likely to take long time in conclusion as charges are yet to be framed.

5. *Per contra*, learned State counsel has filed custody certificate today in the Court which is taken on record and he opposes the prayer made by learned counsel for the petitioner on the ground that huge quantity of contraband was recovered, which falls within the ambit of commercial quantity and as such, the petitioner is not entitled for any relief, however, he could not controvert the fact that the petitioner is not involved in any other case and charges are yet to be framed.

6. 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 10 months and 25 days. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges are yet to be framed and trial of the case has not made much progress.

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***

2025:PHHC:014073



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 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)*

9. 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

2025:PHHC:014073



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.”

10. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Ram Kirpal Yadav @ Ram Kripal Yadav 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.

11. 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

30.01.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No