



CRM-M-51320-2024

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

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CRM-M-51320-2024

Date of Decision : 15.01.2025

JATINDER SINGH

.... PETITIONER

V/S

STATE OF PUNJAB

.... RESPONDENT

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. J.S.Sandhu, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.10 dated 24.04.2023 under Sections 21, 25, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”) registered at Police Station State Special Operation Cell Amritsar (District Intelligence Wing (CID)), District Amritsar, Punjab.

2. Brief facts of the case are that the police officials got an information through the informant that Gurlal Singh and Gurdev Singh had received a huge consignment of heroin from Pakistan through Drone near village Kakkar and they are going to supply the same to some party near Verka Booth Plant Lopoke on their motorcycle. If nakabandi is done then they can be apprehended with the contraband.

3. Learned counsel for the petitioner *inter alia* contends that the



petitioner has been falsely implicated in the present case. He has been nominated as an accused on the basis of disclosure statement made by co-accused namely Gurdev Singh and Gurlal Singh while they were in police custody. Further, any statement recorded by the police officer under Section 67 of the NDPS Act is hit by Section 25 of Evidence Act. Such statements have no evidentiary value and admittedly nothing has been recovered from conscious possession of the petitioner and the alleged contraband was recovered from the co-accused. The petitioner is involved in two more cases under the NDPS Act, however, he is on bail in both the cases. The petitioner is behind bars since 27.04.2023. This is the 3rd attempt seeking grant of regular bail and the earlier one was withdrawn on 28.08.2024. The present application has been filed on account of delay in conclusion of the trial. The delay in conclusion of trial cannot be attributed to the appellant as he is in judicial custody. The delay in trial would dislodge the embargo created by Section 37 of NDPS Act and provisions of Article 21 of Constitution of India would prevail.

4. Custody certificate filed by learned State counsel is taken on record.

5. Per contra, the learned State counsel opposes the prayer made by the petitioner and submits that the petitioner is a habitual offender and involved in two more cases of similar nature, as such, he does not deserve the concession of regular bail.

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 since 27.04.2023. The final report under Section 173 Cr.P.C.



was presented before the concerned Court and subsequently, charges were framed. Currently, the trial is at the stage of prosecution witness and out of 17 PWs, only 01 has been examined. The petitioner has already undergone 1 year, 08 months and 18 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. 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)

7. 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.

8. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Jatinder 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.

8. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned



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Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

15.01.2025
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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No