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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-53323-2024 (O&M)

Date of Decision: 06.05.2025

RAM KUMAR

...PETITIONER

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pardeep Panwar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Harpreet Singh Brar, J. (Oral)

1. This is the first petition filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in case bearing FIR No. 293 dated 28.10.2023 registered under Sections 20(b)(ii) (c)-61-85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Sector-17, Faridabad.

2. As per the prosecution case, on the day of occurrence ASI Jamshed along with other police officials with their government vehicle were present at Old Chowk, Faridabad and at 11.45 AM and an information was received that Kripal Singh, Ram Kumar (petitioner herein), Sandeep and Kuldeep are indulged in selling *ganja* and they bring the same from Odisha and are hiding it in the idols of God. Today, aforesaid four persons are bringing *ganja* by train and after getting down from train they will take a bus and if raid is conducted, they can be apprehended. Finding the information to be reliable, a team was formed, who reached at the spot. At around 12.20 PM, a blockade was started



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near Plot No. 38, Sector 20-A, near Old Faridabad Railway Station. After some time, four persons were seen coming from the direction of the broken wall of Old Faridabad Railway Station carrying heavy bags in their hands. They were signalled to stop, but on seeing the police party, they turned back and started walking with fast steps. With the help of fellow police officials, all four accused were apprehended and their names and addresses were verified. On the basis of suspicion, personal search of accused persons along with their belongings was conducted. On search of cartons tied with cloth *dupatta* in the hands of all the accused persons, *ganjapati* was recovered. On weighment, total weight of all the *ganjapati* was found to be 172.700 KG. Recovered contraband was sealed and accused persons were arrested. On the basis of the alleged recovery, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is behind the bars since 28.10.2023 as such he has undergone incarceration of more than 01 year and 06 months and he is not involved in any other case. Prosecution has failed to conclude its evidence as 05 PWs are yet to be examined. Further, the case of the petitioner is squarely covered by the ratio of law laid down by Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023.***

4. Learned State counsel produces the custody certificate of the petitioner, which is taken on record and *per contra*, opposes the grant of regular bail to the petitioner on the ground that there is sufficient material available on record to prove the complicity of the petitioner and the alleged contraband falls within the ambit of commercial quantity and thus, the petitioner is not entitled to any relief. However, he could not controvert the fact that he is not involved in



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any other case and out of total 13 prosecution witnesses, only 08 have been examined so far.

5. A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. 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."

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 06 months and 07 days as on 04.05.2025. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case is yet to conclude as out of total 13 PWs only 08 have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner.

7. A two Judge bench of the Hon'ble Supreme Court in **Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.)**



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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 @ Nasirdin 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 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



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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, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Ram Kumar is ordered to be released on regular bail during pendency of the trial, on furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.



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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

06.05.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No