

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

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CRM-M-53195-2024

Date of Decision : 13.01.2025

JASVIR SINGH @ FAUJI

.... PETITIONER

V/S

STATE OF PUNJAB

.... RESPONDENT

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

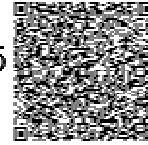
Present : Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., 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.85 dated 26.02.2021 under Sections 18/22/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”) (Section 489-A, 489-B, and 489-C of IPC added later on) registered at Police Station Zirakpur, District SAS Nagar (Mohali), Punjab (Annexure P-1).

2. Brief facts of the case are that on 27.2.2021, the accused/applicant was found in possession of 1500 intoxicant tablets of Lomotil (60 tablets in 25 strips), 420 capsules of Parvon-Spas Plus (20 capsules in 21 strips) and 250 Grams of Opium. As per report of FSL, the contents of samples were found to be Diphenoxylate Hydrochloride, Tramadol Hydrochloride and Meconic acid/Morphine respectively.



Further, the average weight of each tablet of lomotil is 63 mg and total weight of 1500 tablets comes out to be 94.5 grams, which falls within commercial category. Further average weight of each capsule of Parvon-Spas Plus is 588 mg and total weight of 420 capsules comes out to be 246.96 grams, which falls in non-commercial category. Further 250 Grams of Opium also falls within non-commercial category. However, as the recovery of 1500 tablets of Lomotil falls under commercial quantity, hence the stringent provisions of Section 37 NDPS Act are attracted to this case.

3. Learned counsel for the petitioner *inter alia* contends that this is the 2nd bail petition seeking grant of regular bail. The 1st petition was dismissed as withdrawn on 08.05.2023. However, the same would not disentitle him from pursuing it again. In this regard, he places reliance upon a judgment of Hon'ble Supreme Court in ***Parvinder Singh vs. State of Punjab 2003(12) SCC 615*** and also the judgment of a Full Bench of Rajasthan High Court in ***Ganesh Raj vs. State of Rajasthan in CRM-M-19648 of 2021***. Further, the present petition has been filed on account of delay in conclusion of trial. The petitioner has been in custody since 02.03.2021 and is not involved in any other case. He has already undergone 03 years and 10 months of custody till date. He also submits that on account of delay in conclusion of trial, embargo created by Section 37 will be dislodged and Article 21 of the Constitution of India would prevail.

4. Per contra, the learned State counsel opposes the prayer made by the petitioner and submits that three different types of



contraband were recovered from the petitioner and out of them, one falls within the ambit of commercial quantity. However, he could not controvert the fact that he is not involved in any other case.

5. 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 02.03.2021. 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 09 PWs, only 04 have been examined. The petitioner has already undergone 3 years 10 months and 10 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. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Jasvir Singh @ Fauji 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 Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

13.01.2025
anju

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