



CRM-M-58408-2024 (O&M)

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209 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-58408-2024 (O&M)
Date of Decision: 27.02.2025

MOHIT

...Petitioner

Versus

STATE OF HARYANA

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Balraj Gujjar, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG Haryana..

Harpreet Singh Brar, J. (Oral)

1. This is the second petition filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 seeking grant of regular bail to the petitioner in case bearing FIR No. 233 dated 12.08.2023 registered under Section 21 of NDPS Act at Police Station City Jhajjar District Jhajjar.

2. In brief, the allegations of prosecution case are that police party headed by ASI Vikas was present at Kosli turn, Jhajjar, where secret information was received that one Mohit @ Kale (petitioner herein) used to sell injections, which comes within the definition of narcotic contraband. The said person is standing near J.D. Heavens Hotel, for selling injections and if raid is conducted, he can be apprehended with injections. On this information, notice under Section 42 of NDPS Act was sent. Police party conducted raid at that place and upon indication of secret informer, a person was found standing, who on seeing police party tried to flee from the spot but was apprehended. He disclosed his name as Mohit @ Kale. On personal search of petitioner, a mobile phone and cash amount of Rs.450/- were recovered from the right pocket of his pant and



ninety five Buprenorphine Ampoules (2 ml. each) injections IP LEEGESIC 2, containing total 190 grams were recovered from the left pocket of his Pant.

3. Learned counsel for the petitioner *inter alia* contends that this is the second petition seeking grant of regular bail to the petitioner and the first petition was dismissed as withdrawn on 04.03.2024. The second application seeking regular bail has been filed on the ground of delay in conclusion of trial as the petitioner has suffered incarceration of more than 18 months and till date, only one witness out of total 15 prosecution witnesses, has been examined. He further submits that offer made by the Investigating Officer to the petitioner is defective and there is complete non-compliance of Section 50 of NDPS Act. The recovery memo was not attested by the Gazetted Officer, who was called at the spot and there is over-writing in the recovery memo itself, which creates serious dent in the case set up by the prosecution. Further delay in conclusion of trial cannot be attributed to the petitioner as he is incarcerated in the judicial custody. Moreover, the petitioner is not involved in any other case. Learned counsel further contends that 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 filed the custody certificate, which is taken on record and *per contra* opposes the prayer made by learned counsel for the petitioner on the ground that huge quantity of contraband i.e. ninety five Buprenorphine Ampoules (2 ml. each) injections IP LEEGESIC 2, containing total 190 grams have been recovered from the conscious possession of the petitioner, whereas the commercial quantity starts from exceeding 20 grams only. However, he could not controvert the fact that petitioner is in judicial



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 for last 01 year 06 months and 01 day. 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 15 PWs, only 01 has been examined till date. The delay in conclusion of trial cannot be attributed to 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 final disposal of the case 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 conclusion of trial 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)

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7. In view of the above and without commenting upon the merits of the case, the present petition is allowed and the petitioner-Mohit is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

27.02.2025*Ajay Goswami*

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>